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OFFICIAL REPORT

—OF THE—

DEBATES AND PROCEEDINGS

—IN THE—

NEBRASKA CONSTITUTIONAL CONVENTION

Assembled in Lincoln, June Thirteenth, 1871

VOL. II

From the original shorthand notes of John T. Bell, John Hall, Dan Brown and John Gray. Prepared for printer (1871) by Guy A. Brown, Clerk o the Supreme Court of Nebraska.

Revised, edited and indexed for publication (1907) by

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Director of Field Work, Nebraska State Historical Society

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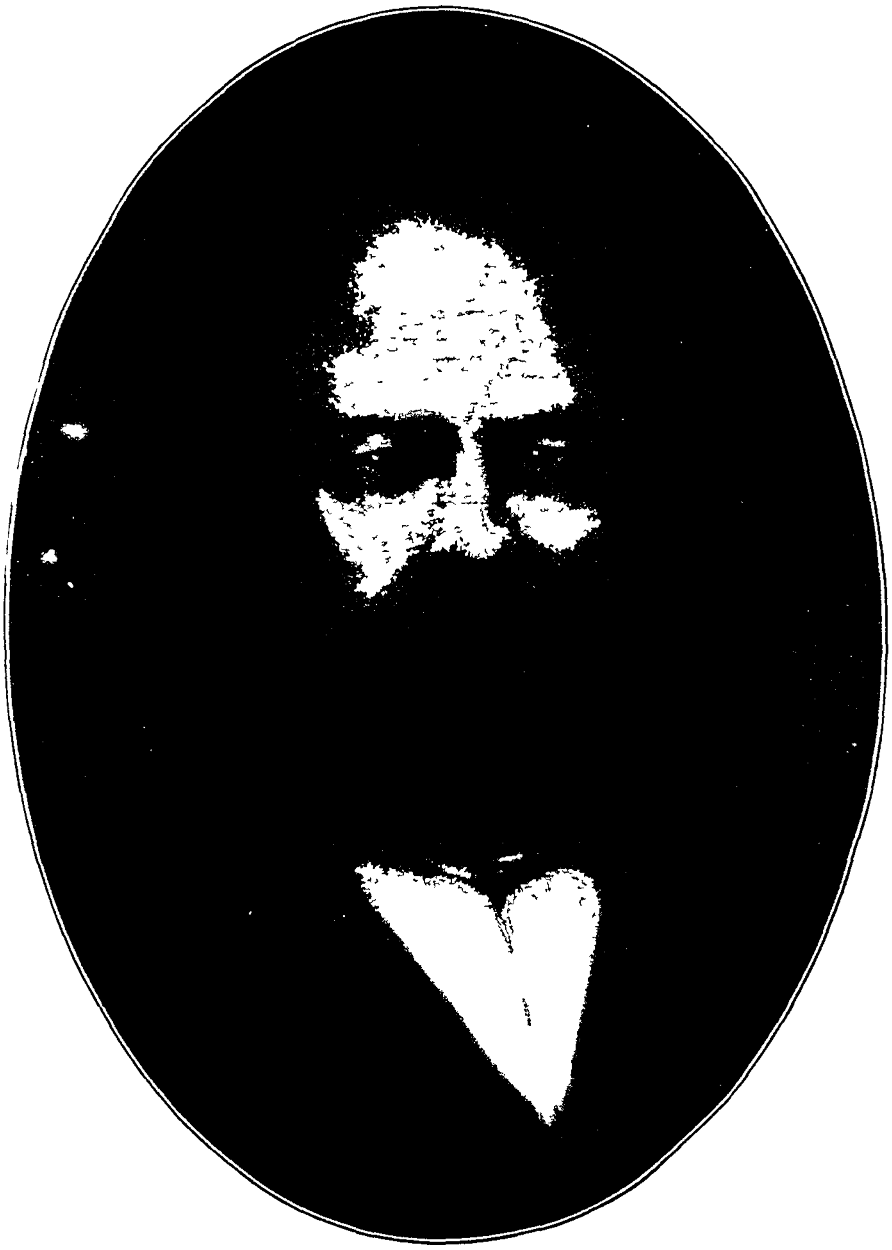

OLIVER PERRY MASON

PATRIOT PIONEER JURIST

Born May 13, 1829, at Brookfield New York Died August 17 1891 at Lincoln Nebraska Settled at Nebraska City in 1855 Member of both Houses of the Legislature and President of the Council Provost-Martial of the District for Nebraska, and Colonel in the State Militia First Chief Justice Secretary of the Board of Transportation Lecturer on Medical Jurisprudence in the State University Constitution maker, 1869 1871.

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NEBRASKA STATE HISTORICAL SOCIETY

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STATED MEETINGS

Annual meeting of the Society, Second Tuesday in January. Meeting of the Executive Board, First Tuesday after Second Monday in January, April, July, October.

PREFACE TO VOL. II

The first volume of Nebraska Constitutional Conventions is just from the press and laid upon the desks of the members of the thirtieth session of the Nebraska legislature. Its reception has been generous and funds seem assured for the completion of the series. The prospect now is that four volumes will be required.

It has been found impracticable to send proofs to surviving members of the convention and await their return before printing Instead, every living member will be sent a copy of each volume, as soon as printed, with earnest solicitation for corrections and recollections suggested by its perusal. These will be gathered into notes in the final volume.

Part of the plan for these volumes is to illustrate them with a complete set of portraits of the members of the constitutional convention. Besides these, there will be illustrations of the early Nebraska Capitol and a few other characteristic early pictures. These are being gathered for use in the volumes which will follow.

The band of survivors of 1871 has grown smaller while proofs were being read. Since work began upon these volumes there have gone from our midst James M. Woolworth, and James E. Boyd, of Douglas county; John Wilson, of Johnson county; Alfred L. Sprague, of Saunders county; Beach I. Hinman, of Lincoln county. The following is the list of the living members with their present address

Othman A. Abbott, Grand Island.
John C. Campbell, Tabor, Iowa.
John N. Cassell, Aurora.
Pelham S. Gibbs, Tekamah.
Nathan K. Griggs, Lincoln.
Edwin N. Grenell, Ft. Calhoun.
Isaac S. Hascall, Omaha.
J. A. Kenaston, East Chattanooga, Tenn.

James Kilburn, Lincoln.
George B. Lake, Omaha.
Charles F. Manderson, Omaha.
James E. Philpott, Lincoln.
Charles A. Speice, Columbus.
Alexander S. Stewart, Hot Springs, S. D.
George H. Thummel, Omaha.
Edwin S. Towle, Falls City.
Eleazer Wakeley, Omaha.

It is forty years ago today since, the last conditions complied with, the proclamation of President Andrew Johnson made Nebraska one of the sisterhood of states. What memories are stirred by the fact! Even as I write comes a delegation from the legislative halls below to these rooms for material to draft resolutions commemorating the event. Four decades! Who dare forecast Nebraska four centuries hence?

ADDISON E. SHELDON.

LEGISLATIVE REFERENCE ROOMS
STATE CAPITOL
March 1, 1907.

NEBRASKA CONSTITUTIONAL CONVENTION OF 1871.

VOL. II

TWENTY-SEVENTH DAY.

The Convention met at nine o'clock and was called to order by the president.

Prayer.

Prayer was offered by the chaplain, as follows:

God of all grace, permit us still to look to thee for help, to look to thee for deliverance from sin, teach us that we may praise the name that is most excellent. Bless America with all the influences that make a nation strong and great. Win us from the evil, confirm us in the good, make all our many millions one band of loyal souls, we pray. Amen.

Reading of the Journal.

The journal of the previous day read and approved.

Committee of the Whole.

Mr. SCOFIELD. Mr. President. I move that the convention go into committee of the whole for the purpose of considering the article reported by the special committee, in reference to public buildings.

The motion was agreed to, so the Convention went into Committee of the whole—Mr. Gray in the chair.

The CHAIRMAN. The secretary will read the report.

Public Buildings.

The secretary read the report as follows:

"The special committee to whom was referred the report of the Standing Committee on State Institutions and Public Buildings, together with the several amendments proposed thereto, respectfully report, that it has had the subject under consideration and submit the following, and ask that it be embodied in the constitution.

Sec. 1. A superintendent of public buildings and a Land Commissioner shall be elected at the first general election provided for in this constitution and at the general election every two years thereafter, and these officers together with the Secretary of State, the Treasurer and the Attorney General shall have the supervision and control of all the public buildings, institutions, grounds and lands of the state subject to such rules and regulations as may be prescribed by law. And your committee further recommends that the same be made a part of the Article on executive."

Mr. SCOFIELD. Mr. Chairman. I move the adoption of the first section.

Mr. MAXWELL. Mr. Chairman. It seems to me the duties ought to be prescribed if a superintendent of public buildings is elected, we had better give him the entire charge of the public buildings. I propose an amendment to that effect.

Mr. HASCALL. Mr. Chairman. The section as presented is objectionable. You are to create two new officers and confer upon them no more duties to perform than are conferred upon the remainder of the board acting jointly with them. There should be some provision that would allow duties to be conferred upon these two officers additional to the duties to be performed by the board itself. It says, true, that they shall have control subject to regulations to be made by law; these regulations to be made by law applies to the whole board collectively. It seems to me the correct way would be that we should create two officers, then leave it to the legislature to confer upon these officers such duties as they may see fit, and at the same time make other members of the board to act in conjunction with these other officers that are part of the state officials.

Mr. SPRAGUE. I do not propose to occupy much time but I must say, for one, that I am decidedly opposed to mixing up our school matters with the other officers of state. I think it is sufficiently important to have a set of officers for itself. Experience has proven, that if you pile upon the other officers of the state the business of looking after the educational interests of the state they will be neglected.

Now, sir, for one, I believe that the educational interests of the state should be fostered and have officers to have the matter in charge who are peculiarly adapted for that purpose. I am opposed to mixing up this with other interests of the state. I much prefer the provision which was adopted in the consideration of the report of the committee on education, that we leave it to the state superintendent and state officers as may be placed on that board. There is another reason why I oppose this report. It is that this state land commissioner is to have these duties imposed upon him. Now, if he attend to the land business alone, he will have all he can do. Hence, I am opposed to putting on him the burden of looking after state buildings, and I think that department should be kept entirely separate from the other, and for these reasons I shall oppose the report made by the committee.

Mr. WOOLWORTH. As a member of the select committee to which this matter was referred, I feel a desire to say a few words. I think when the report as made, comes to be understood by the convention, the difficulties which have been suggested by the gentleman from Cass and the gentleman from Saunders, and perhaps the gentleman from Douglas will appear to be obviated. And I will say at the outset, that the objection made by the gentleman from Saunders does not exist at all; because it is not proposed that either the board, that is provided for in this report, or either one of the officers who are to be created by the report we have sent in shall have the charge of the educational interests of the state, so far as the management of the schools are concerned. Now, there were a great many conflicting views in the committee when we set out together to settle upon this plan. But upon one matter there was no disagreement; there was no disagreement that there ought to be one board, or set of officers or officer, as the convention should finally decide upon, who should have charge of schools as institutions of public instruction; and that there should be another board or set of officers or officer, as the convention should finally agree upon, who should have charge of the school lands as well as the other public lands; and that these two boards or sets of officers or officer should be entirely separate and distinct. On that subject, I say, there was no disagreement in the committee. Now, as I understand the gentleman from Saunders, he objects to the report because it brings under the board that is proposed to be created by the proposed article, the care and management of the schools as institutions of instruction. That is not designed at all. So far as,—and I will say by way of passing, what my view now is although I have had some difficulty in reaching a conclusion, I am in favor of incorporating an article that shall provide that there should be a board of education, to be composed of the superintendent of public instruction, as its presiding officer, and five, seven or more gentlemen selected from the state at large; and provide in the constitution that those gentlemen shall render their service without any compensation whatever, except simply their necessary, actual expenses, and I think the convention has agreed, measurably at any rate, to leave this matter to the legislature. I should prefer to have that provision incorporated in the constitution. That is not, however, the matter before us now. I merely wished to state my views to show that this report of this committee is not open to the objections urged by the gentleman from Saunders.

Now, sir, it was among other things that were considerably debated in this committee, pretty well agreed and understood that there should be one officer, whose sole and exclusive duty it should be to take care of the lands of the state. We disagreed at first, with reference to putting in his charge all the lands of the state; that is the lands given for public improvement in the state, such as penitentiary and university; and at the same time the lands in the 16th and 36th sections. But we agreed that there ought to be one man who should have charge of all the lands of the state. Then the question was whether this officer should be left altogether free to manage these public lands without supervision by any other officers, or some other officers to be associated with him, to have some general care of the matter along with him. And it was finally agreed in the committee that it was better to select one man and elect him by name, as a land commissioner, or agent, or whatever you may please to call him; one officer who should be selected and named to have charge of all these lands; and that there should be associated with him the state officers who would measurably, be charged with these landed interests. So that one man would not have this immense domain in his charge to manage, dispose of, or account for, without having someone to look after him. And I think that answers the objection of my colleague from Douglas. And I think it shows that the plan adopted by the committee in respect to these officers is a fair, and just and practical one. And right here let me say that I do not think that the objection of the gentleman from Cass is well founded—that these duties of these different officers, and of the board, should be distinctly laid down in the constitution. I certainly do not think it possible to do it, with all the precautions and checks, and care that it would be necessary to explain. I can say to the gentleman from Cass that had he been in that committee and listened to that discussion, which was greatly protracted, he would have seen that it was impossible, in the constitution, to advance any plan of organization that should go at all into detail. The committee thought it was better, in fact, they thought that the only way that could be done was to trust the details to the legislature.

Now this is all I think it is necessary to say with reference to the land commissioner and the board. There was much debate and doubt as to the creation of an officer who should be called the Superintendent of Public Buildings. At one time the committee agreed among themselves to trust this matter to the state officers; but upon more mature reflection they thought it was better to create him and surround him by the same guards, and leave the prescription of his duties and the duties of the board created by this proposed article to the legislature. So I need not go over that matter.

Now, as to the necessity for this officer. We are to remember that, first there are to be erected very considerable public buildings in the state—a penitentiary, and the different benevolent asylums of the state; the deaf and dumb asylum, the insane asylum, and so on. This building might be called the blind asylum, but I refer now to the asylum for the blind (laughter). Here are these buildings to be erected in the first place, and then they are to be looked after. The matter of repairs, the matter of insurance, the matter of prevention of fires, by proper precautions—all these matters ought to be in the charge of some person who will be held accountable for them. So the committee thought, on the whole, it was better to create this officer, and put him, as land commissioner, under the general direction of this board and let the legislature prescribe the duties, both of the board and this officer. I am glad to say that no member of the committee came with any pre-conceived ideas which he was determined to crowd through, but all seemed willing to advise with the others, and the committee are prepared to accept any amendments which would improve it; but the committee reached, at last, the conclusion that this report, as presented, was about the best thing they could do. They agreed however, that it would be desirable, if the convention saw fit to provide that these two officers, or one, if only one is provided for, should be incorporated with the state officers, should give bonds and be subject to the same responsibilities as the state officers. The salary should be fixed and then the article should state this should be the only officer having to do with this matter.

Mr. HASCALL. Mr. Chairman. It is not to the whole section I object. It is because I think the section is not enough to carry out the full idea, I have prepared an amendment which I would have added to the end of the section.

The section as drawn, as I understand it, aims at the joint action of these two officers in connection with others as I understand it, the land commissioner should have an office and perform duties independent of this board. Here is my amendment:

The superintendent of public buildings, and the land commissioner shall each perform such duties additional to the duties above described as shall be provided by law.

The CHAIRMAN. The question is upon the amendment offered by the gentleman from Douglas (Mr. Hascall.)

Mr. ESTABROOK. Mr. Chairman. The provision in the section as reported provides that all these officers shall perform these duties. It seems to me this covers the whole ground.

The CHAIRMAN. If the gentleman will wait, I will read a portion of the section, together with the amendment of the gentleman from Douglas (Mr. Hascall.)

A superintendent of public buildings and a land commissioner shall be elected at the first general election provided for in this constitution and at the general election every two years thereafter, and the secretary of state, the treasurer and the attorney general, shall have the supervision and control of all the public buildings, institutions, grounds and lands of the state, subject to such rules and regulations as may be prescribed by law.

The ammendment adds: "The superintendent of public buildings and the land commissioner shall each perform such duties additional to the duties above prescribed, such duties as shall be prescribed by law."

Mr. ESTABROOK. It seems to me that the amendment is entirely needless. It is simply to provide that each of these officers shall perform those duties which the legislature shall provide. It seems to me that is sufficiently reached in the section reported. We have here three committees whose duties require them to consider these subjects or subjects of like bearing, the committee on schools, the committee on public buildings and the committee on lands, other than school lands. Each of these committees has conceived that a board or some part of a board was necessary to perform those particular duties which they had in charge. Now when all of these reports come to be considered before this convention, it was thought to be of sufficient importance for the convention to order a reconsideration by the committees of the subject and inquire whether all these interests had not better be combined on one board. Now, whether this is best or not, is not for me to say. I think it is. Then we should consider what kind of a board is necessary? I think that the board should consist of an added member, so that there should always be a majority to determine questions. I think it is best it should consist of as many as five. I presume it would not be necessary for a greater number. It has been suggested with a good deal of plausibility that there should be a board consisting, perhaps, of five members, possibly with the superintendent of public institutions at its head, possibly the lieut. governor at the head; one member to be elected from each judicial district, but if all these interests be combined, we conclude that about 5 is all that is needed and the necessity of electing one from each judicial district should be done away with. It seems to me, speaking for myself, that this fixes the matter about right, to elect two and then make up a board with state officers. The board should have one of its members to have oversight of the lands of the state. This is the most important interest in the state. I presume it is a more important interest even than that which will be under the charge of the governor because the school lands alone, will reach the value of many millions of dollars. Hence there should be one officer, who, from the name given him, should be indicated as the officer who stands at the head of that bureau, to be responsible for the manner in which these interests were cared for. Then too, in looking all around and viewing all the interests involved it seemed to some of the committee and finally, I think, to all of them, that there was sufficient demand for one officer on public buildings and grounds. You can look out at that window today and see the need of such an officer now. Why those high weeds? Why are not these grounds kept in decent order? Are all the public buildings insured? Have they all got proper out houses? Are the ashes properly taken care of and all these guards against fire seen to? Besides these there are a thousand and one little things incidental to the care of the public buildings; hence we say there should be two officers elected outside of the usual number of officers already provided for. Well, what other interests are involved in the work of this board? There is a large amount of money to be handled and it will be necessary to have a treasurer. It was thought by the committee that to give the treasurer elected by the people these duties and make him responsible for the care of these monies would be the best plan. Another interest to be considered, was the law questions that should grow out of the performance of the duties of the board, then you need a law officer connected with it, and hence we include the attorney general. and then you will need an officer to take charge of the records of their proceedings and we thought it should be one who has a vault for the safe keeping of records. Then it did seem to me as an individual that when we had provided for all these we had all that was necessary to comprise this board. It may be said that the time may come when the commissioner of lands would have no particular duties to perform, but recollect he is a member of the board, and individual advice will be taken as to the manner of making sales and giving in all the business connected with with the board. Now then if that board so constituted does not fill the bill and come up to the ideas of those who voted for having this matter sent back I have to acknowledge that I am incompetent to devise anything that will suit. Now, as for myself, I suggested in the report of the committee on education, I have suggested the election of a superintendent of public instruction, you may have in this office a man fully competent for such office, but who is entirely unfit to have charge of the monetary interests of the state in any particular; and, hence, I had no hesitation when this board was suggested to drop this officer and leave him in his own department. Then, too, it had been suggested that the governor should be a member of this board. I think it would be bringing the executive officer of the state down from the dignity which properly belongs to that officer to have him engage in all these duties. It seems to me that to leave him to enjoy the dignity of his position, standing outside of any of these boards, having general supervision of them all, is better. And now to the question of duties. It seems to me that the last clause of this report reaches the entire necessities of the case: They shall perform such duties as shall be prescribed by law. The designation of each one of the board indicates the duties they will have to perform.

Mr. MAXWELL. Now, Mr. Chairman, I think we are all in favor of electing a land commissioner to take exclusive control of the lands of the state and I think also an officer to take charge of public buildings. I have prepared a substitute which I will offer for the report of the committee; it reads as follows:

"There shall be elected at the first election under this constitution a land commissioner who shall have charge and dispose of in the manner provided by law all the lands owned by the state, and shall give bond to the state in the sum of $100,000.00 and shall receive a salary of $1,800.00 per annum.

"There shall also be elected at the first election under this constitution a superintendent of public buildings who shall have charge of all public buildings and grounds owned by the state and of the erection and repair of the same in the mode provided by law; who shall not be interested in any contract relating to the same and shall give bonds to the state for the sum of $100,000.00 and shall receive a salary of $1,800.00 per annum.

Now, Mr. Chairman, we are proposing to create new officers, and if so why not prescribe their duties as we do in other departments? If we are to have a land commissioner who is to have charge of the public lands, why associate with him other officers who have other duties for which they are elected? I say elect a man alone for these duties and give sufficient salary to secure a competent man. Now then as to the superintendent of public buildings, is not it better, Mr. Chairman, to trust this matter in the hands of one man elected for that special purpose? there is nothing to be gained by associating with him the attorney general, state treasurer or any other officers. I trust therefore that we will create but one officer for each of these duties.

The CHAIRMAN. The question is on the substitute of the gentleman from Cass (Mr. Maxwell.)

Mr. NEWSOM. Mr. Chairman. To some extent I am in favor of the idea of the gentleman from Cass. My objection to the report of the committee is that it is a blending of authority. There is no individual responsibility. This whole board is responsible for the management. I like the substitute better, because it makes individuals responsible, and I think if he would add to his substitute, that these officers shall constitute a board which shall have a general supervision of this matter. I desire that the land commissioner shall be independent of all other officers, but there must be someone behind him to whom he shall be responsible for the faithful discharge of his duties.

Mr. LAKE. Mr. Chairman. I like the substitute offered by the gentleman from Cass (Mr. Maxwell) better than the report of the committee. It seems to me it would be strange to elect an officer, for instance, a land commissioner, and require him to give bonds for the faithful discharge of his duties, make him answerable to the state for the manner in which those duties are performed, and at the same time make him subservient to the dictation of two or three other individuals, who have really no interest such as he has in the performance of those duties. The land commissioner is required to give bond for the sum of $20,000 for the faithful discharge of the duties of his office, the people of the state generally will look to him as the responsible person, one who is answerable for the manner in which duties are performed, and still through the dictation and control of these several other officers, his plans and desires may be injured in every instance. I think it far better that some responsible person shall be elected for the purpose of each one of these several duties, require him to give ample bonds for the faithful discharge of the duties which may be devolved upon him by law, then there will be no difficulty as to who should be held responsible for the way in which the duties of that office are performed. In case of the disagreement between these several officers as to the transaction of any duty, must not the board be called together for the purpose of passing upon every question which may arise? Can the land commissioner perform a single duty under this provision of the constitution without the approbation of all the other members of the board? Will they not be required to act in conjunction in respect to every question which may arise? Will it not be an unwieldy board? It seems to me we should find responsibility shirked from one to another and finally no responsibility anywhere. We elect a state treasurer, who has duties to perform, which are as burdensome, as responsible, as important to the people of the state as any duty which can be devolved upon either one of these new officers which it is proposed to create, a land commissioner, or a state house commissioner. If it is not necessary to provide an advisory board with respect to the duties of treasurer, why with respect to the land commissioner? I can see no reason why he should be thus controlled in his every action more than the treasurer, both are acting under the authority of law, both are carrying out the will of the legislature as expressed in legislative enactments. The duties of each are clear and distinct, and each one of these officers individually should be held responsible for the faithful performance of those duties. It seems to me the farthest we should go would be to create an advisory board, not a board of control, one which could be called upon to advise in respect to any matter which the legislature in their judgment may see fit to place within the range of duties of these several officers, which may be called upon to act in conjunction with the land commissioner or commissioner of public buildings, but you allow the attorney general, treasurer and auditor or a majority of them to have an absolute control over another state officer, an officer elected by the people of the state at large, and who is required individually to give a large bond for the faithful performance of the duties of the office to which he is elected. I say it would be unjust. The individual who gives the bond should control the office, at least where there is a difference of opinion, the man who is responsible should control the matter. I much prefer the substitute to the original proposition. I think that it will be far better in practice than the original proposition. I think it will be far better in practice. By the scheme which he proposes there will be a head to each of these departments, an individual to whom the people will look in all time for the purpose of ascertaining what has been done. The person to whom they can refer is a responsible person, and responsibility, under the plan he proposes, may not be shirked from the shoulders of one to the shoulders of the other, rendering it impossible to find out who is responsible for any action which may be had.

Mr. HASCALL. Mr. Chairman. I wish to answer a few remarks made by my colleague (Mr. Estabrook) with regard to the true meaning of this section as reported by the committee. In the first place they go on and create two officers, a land commissioner and superintendent of public buildings. The gentleman says, I refer you to their names. Now I contend there is nothing in a name, and I have good authority for it, we have a celebrated author who said there was nothing in a name. Secondly, I refer to it to refute the gentleman's argument. It is time we call him the land commissioner, but what does it signify unless you confer some duties upon him. This section erects a constitutional barrier to confer any duties upon the land commissioner or superintendent of public buildings. He says they shall be elected by the people and these officers together with the attorney general, secretary of state and so forth shall perform duties as prescribed by law. They have to act in connection with the other officers, and as was remarked by the gentleman from Otoe (Mr. Newsom) it is a blended authority. The constitutional barrier erected prohibits the legislature from conferring any duties upon these officers, but they may regulate the duties of these several officers when acting together. Well, we do not want any such thing as that. I am in favor of the gentleman's argument as to what should be. The gentleman goes on to say what should be in the state, but at the same time when he says that he has erected a constitutional barrier, which prevents the legislature from carrying out the thing he says should exist. Now, when the legislature goes to work to make laws for the land commissioner we want them to have permission to set the land commissioner—

Mr. ESTABROOK. Will the gentleman allow me to ask him a question? Was not that committee sent out to provide a board? Can you provide a board for the management of these things without giving them joint control?

Mr. HASCALL. That is all right. The substitute offered by the gentleman from Cass can be made available to carry out the ideas this convention should adopt. It may be made an advisory board, but you must have separate duties to be performed by the superintendent of public instruction and land commissioner. And it is only by conferring, by act of legislature, that these officers do these duties singly, that you carry out the object. Now, let us see what my colleague, who has just sat down says. He says the intention of the committee was as I stated. Well, then, if that was the wish of the committee they made a mistake in phraseology. Because they tied up the legislature. The gentleman says my amendment, if adopted, would be the thing. Now that is a very nice way to slick it over with mud.

Mr. WOOLWORTH. Will the gentleman allow me a word? I do not think the committee disagrees upon this subject at all. The report of the committee was that these officers should be incorporated in the executive article. If you will turn to the first section of that article you will find it provides there that the officers of the executive department should perform such duties as prescribed by law. The committee did not think it necessary to insert a provision in respect to these two officers because if their recommendation was accepted that these two officers should be made branches of the executive department, then [by] this provision of the executive article, would relate to and control them. The committee did not disagree with the general views expressed by this gentleman, but they thought they covered them by the provision which was made; and I do not really see any necessity for——

Mr. HASCALL. If the gentleman has made the explanation, he can make his comments afterwards. My colleague said this section, as reported, contained several things. Now I contend that it does not read the way the gentleman indicates. We agree fully about what should be, but upon what the section says will be, we differ. If there is any portion of the executive article which would carry out the idea covered by the proposed amendment, of course I am satisfied with regard to that. But it would be disastrous to say that certain things should be done by a board.

Now, let me answer the objections made by my colleague who has just risen to explain. I contend that these duties are centered in the board, and consequently where you confer upon a board certain duties by a constitution, and they are to be regulated by law, you cannot confer those duties upon any single officer. He says they may perform such other duties as may be prescribed by law. But that is stated with a qualification. I think it is right to have a board for the general superintendence of affairs pertaining to these branches, but when you attempt through a board, and particularly when it is composed of state officers, when you undertake to perform all these minute actions by this board then, I say the whole thing is a failure.

Mr. THOMAS. Mr. Chairman. I would be in favor of the amendment offered by the gentleman who spoke last, if I agreed with him upon the law. I do not believe because this section imposed certain duties upon a board that the legislature cannot impose additional duties upon a certain member of that board. I do not understand that it makes it necessary that they should all have equal charge. If such was the case, I would be in favor of the amendment offered by the gentleman from Douglas. But it seemed to the committee that the legislature had sufficient authority under the section as it now reads. The question with us was whether we should have a single officer to exercise the duties of land commissioner without the control of any other officer, and whether we should have a commissioner of public buildings, who should have the supervision of the public buildings, without any one to control. I do not think there is anything in the section as it now reads, that would prevent the legislature from imposing the duties upon these officers. It seems to me they should have the superintendents of these buildings under such restrictions that the legislature may see fit to provide. Now, is it better that we should create the office of land commissioner and commissioner of public buildings and let any other officer have any supervision or control over them? This seems to be the intention of the substitute offered by the gentleman from Cass. When this matter was up the other day before the committee of the whole, it seemed to be thought best that the duties be imposed upon the state officers, and we thought that was the desire of the convention. What state officers should we elect? We thought we should elect certain officers, who should have control of the details of these matters; and that there should be a certain board, composed of those two officers and of certain state officers to have general supervision and control of all those matters. It seems to me it has been carried out. And if I agree with the gentleman upon the construction, I would agree that his amendment should be adopted. But it did not seem to say that such would be the construction that would be placed upon it. Now, with regard to the requiring of bonds. That matter is left with the legislature. They may require such bonds, and just in such a mount, as they think proper. The conditions of the bond would be that they properly perform the duties of their office. Suppose that such a bond was given and the duties of their office should be under the control of this board, which has control and supervision of other matters. Now it seems to me it would not be wrong to require these officers who should have supervision of these matters to give bonds. They would not forfeit their bonds so long as they act under the direction of those advisory boards. I think there is a provision in the constitution of the state of New York which provides for cases similar to the one in question, and which requires officers who work in connection with others, as a board to give bonds. This section provides that the legislature may impose certain duties upon that board. Now if there be anything to prevent the legislature from imposing certain duties upon certain officers, it must be there is a defect in the constitution. The gentleman from Douglas who last spoke (Mr. Hascall) does not differ in the slightest particular from the committee. The only question is whether it is requisite to add the amendment to make this section full. I admit that the substitute offered by the gentleman from Cass (Mr. Maxwell) is very different. If it is the desire of the convention that the land commissioner should be a separate officer then the section proposed is deficient, if it is desired that he shall act in connection with other members of a board, then this section secures that end.

Mr. MASON. Mr. Chairman. It seems to me that something like this will accomplish the result sought: "There shall be a land department which shall be in charge of a general land commissioner who shall be elected by the people whose duties and salary shall be as prescribed by law and whose term of office shall be two years. There shall be elected a superintendent of public buildings whose duties and salary shall be as prescribed by law and whose term of office shall be two years. The land commissioner and superintendent of public buildings together with the secretary of state, treasurer, and attorney general shall constitute an advisory board for the land department and the superintendence of public buildings and the powers and duties of that board shall be as prescribed by law."

This it seems to me, states clearly what the committee had in view, but I am not in favor of that, altogether, and I will briefly state my reasons. I am in favor of striking out the whole section and the substitute and inserting about three lines, as follows:

"There shall be a land department, which shall be in charge of a general land commissioner who shall be elected by the people and whose duties and salary shall be as prescribed by law."

Now sir, why should we reject the report so far as it relates to the superintendent of public buildings? There is danger of creating too many officers and the people may think that, like the frogs in Egypt, they will eat out their substance. I think the public grounds and the public matters should be in charge of the legislature. These departments and officers we create in the constitution are constitutional departments and cannot be wiped out or changed at the pleasure or will of the people. It seems to me it is not necessary to create now this office of superintendent of public buildings, but we should leave it to the legislature to do. Many things which would be wise for them to do, are very unwise for us to do. The duties of these various departments must be left somewhat to legislative control. The salary of this officer should be established by the legislature for his duties decrease each year. The first year, I have not the slightest doubt if he does his whole duty the pay should not be less than $3,000; the next year it will be less; the next less, and finally the duties would wind up entirely. Hence I don't agree with the substitute of the gentleman from Cass (Mr. Maxwell) because I think, for the first year, $1,800 is too little. Perhaps the next year it would be too much. I would be opposed to fixing the salary, but in order to make progress in this matter, I wish the convention to determined whether we shall have a superintendent of public buildings or not. For my own part, I should be opposed to create such an officer in the constitution, I have learned from experience that it is not well to create these officers so that they cannot be wiped out. If it should be the sense of the convention that this office of superintendent of public buildings is to be created, then I shall offer a substitute, but, sir, I am not in favor individually of a superintendent of public buildings at this time for the reasons I have previously suggested. I would leave this in the hands of the legislature. The people might elect such an officer under this provision who knew nothing about the duties of this office, and who would be a dead weight upon the state. I think it would be the best plan to leave it in the hands of the legislature to create this officer if necessary, but if we should leave the land department in this condition that might occur which would greatly damage the interests of the state, as in the past, for the need of some person to faithfully follow up this matter and for these reasons I send up the substitute which I have just read. With one word, sir, and I am done. With a population of from 150,000 to 175,000, with a state badly swamped in debt, it seems to me it is not necessary to create any more offices than are absolutely necessary to navigate the ship of state through the rough sea on which she now is riding.

The CHAIRMAN. Does the gentleman from Otoe (Mr. Mason) think his proposed substitute is in order?

Mr. MASON. I don't know, Mr. Chairman, when it is in order I will offer it.

The CHAIRMAN. The question is still upon the substitute offered by the gentleman from Cass (Mr. Maxwell.)

Mr. MAXWELL. Mr. Chairman. I think there is sufficient reason why we should have a land commissioner, and the argument offered by the gentleman from Otoe (Mr. Mason) sustains my position. My substitute provides for the performance of certain duties and requires the giving of such bonds as are necessary, while that proposed by the gentleman from Otoe (Mr. Mason) leaves it to the legislature to fix the amount of the bonds. The election takes place this fall and the person elected will take charge of his office at the same time of the meeting, and at that time there would be no law requiring him to give bond, and if the legislature should fail to provide such a law during their session, you will fail to have the proper bonds given. The gentleman complains of cheats in office and the way to guard against this is to require the officers to give sufficient bonds, and this is required by the substitute I have offered here for this report.

Mr. MASON. Let me inquire of the gentleman if we have not provided in the executive article a general provision that all officers shall give bonds for double the amount coming into his hands.

Mr. MAXWELL. But how are you going to find out how much money is coming into his hands.?

Now as to the superintendent of public buildings I think for the next five years at least we will need such an officer. I am as much in favor of economy as any gentleman on this floor, but would it be economy Mr. Chairman to do without these officers at the present time. Their salary will not be equal to the loss that we may have for the want of these officers. It is paying a very poor compliment to the people of this state to say that they will elect incompetent officers. That argument would hold just as good against any other officer. Now as to trusting to the legislature, every man who has been in a legislature knows the pressure brought to bear on these bodies to create new officers, here is a good fellow out of business is the usual argument used to get him into office and give him a good salary. Now, there is no such argument or influence used here, we are acting now for the people of the state, and it seems to me that it would be better now for us to create these offices and prescribe what the duties shall be.

Mr. ESTABROOK. Mr. Chairman. I presume it will be recollected that the reports of three committees were kept in abeyance for the purpose of fixing up this report. The various propositions are of such a character as to set us again all afloat, and I will not object to the motions if any good can be accomplished, but after listening to all the objections I feel entirely confident that not one objection has been urged that is tenable. I think the language and reading of this report have not been duly and properly observed. I undertake to say that the legislature can pass an enactment and limit the duties of the treasurer of that board. It gives them the right to regulate and control, reconstruct and limit the powers of the board; they can declare that the attorney general shall have no other occasion with this board than simply give advice; there is complete and ample power to prescribe. The suggestions that we have an advisory board seems to me ridiculous. I believe in leaving it as it is so that the legislature can declare what duty each individual member of the board shall perform. You say that the attorney general or treasurer are not elected for such a purpose. Who told you so? Our constitution thus far simply creates the office. Tell me what provision declares what duty the treasurer shall perform? We are simply prescribing the duties of these officers and it is not superadding anything to their duties, because their duties have not been prescribed. As a member of this board the treasurer shall perform the duty of keeping safely the treasury; as a member of the board shall keep safely the record, books and accunts; and as a member of the board the attorney general shall have no other connection with it than simply give legal advice. It seems to me that every single argument urged against this board has been fully answered by the terms and language of the report itself. It says the duties shall be discharged under such rules and regulations as shall be prescribed by law. One of the rules is, if you please, that the treasurer shall do nothing but simply hold the funds. I would not make him a member of an advisory board but leave him to the duty that pertains to his office, and the land commissioner shall do the duties especially pertaining to his office. What is to be done with the funds? Supposing you provide simply a land commissioner, he sells the land and what does he do with the funds? It is necessary he shall have a treasurer, it is necessary he shall have some law officer with whom to advise, but says the gentleman, that is his duty now. Where did you learn that fact. I propose he shall be placed in a position, and that we shall now prescribe and declare a portion of his duties; as a law officer he shall act as attorney of the board.

Mr. WAKELEY. Mr. Chairman. I do not propose to discuss the several propositions that have been made. The gentleman from Otoe (Mr. Mason) in expressing his own sentiments upon this subject expressed mine fully and almost exactly. I believe it is necessary that there should be a land commissioner elected. I think the public lands are of such extent and value pecuniarily and the interest connected with them so vast that it would justify us in creating the office of land commissioner, but I am opposed to electing an additional officer as a building commissioner. I think with the gentleman from Otoe, we ought to be particularly careful about multiplying officers. At best we are obliged to increase the officers of the state very considerably, we are obliged to enlarge the judiciary, provide for the election of four additional judges, and are creating a land commissioner in addition to all these. I do not believe it necessary to have an additional officer to perform the special duty of taking care of the public buildings. I believe in doing one of two things, either electing a state officer who shall be the land and building commissioner and who shall have supervision of the public lands and buildings, and perform such duties in regard to the sale of the land and preservation of the public buildings as the legislature may confer upon him. I believe we can safely do that. The business of a constitutional convention is to provide for electing the officers, and leave all matters of detail to the legislature as far as possible. I think also with the gentleman from Otoe, even the continuance of the office of land commissioner ought to be left to the legislature. I have drawn a section embodying substantially my own ideas on this subject which I will read.

"There shall be elected at the same time as other state officers are elected 1 land and building commissioner who shall have general supervision of the lands and buildings belonging to the state; and shall perform such duties and have such powers in respect to the same and to the sale of the lands as the legislature may provide. He shall receive a salary to be fixed by law; and the office may be abolished whenever the legislature shall determine that it has become unnecessary."

I do not offer it as an amendment, but for the purpose of arriving at a vote in regard to the necessity of a building commissioner. I move to amend the substitute offered by the gentleman from Cass (Mr. Maxwell) by striking out all that relates to a building commissioner.

Mr. WOOLWORTH. Mr. Chairman it is not my desire to say anything more with reference to the merits of these propositions made to the committee. I felt as if I had discharged my duty. But some views have been presented to the committee this morning from which I am bound to dissent, and that dissent I beg to express in the most emphatic manner. I am opposed unqualifiedly and from beginning to the end to leaving to the legislature the power to create officers at liberty. I am opposed to submitting this constitution to the people of this state without an expressed provision limiting the number of officers. Now I went over the subject the other day and I do not think it necessary for me to repeat what I have said. I think what I said met the concurrence of a very decided majority of the convention, but I will say, that I am opposed to leaving to the legislature the power of doing what former legislatures have been doing, creating three inspectors of state's prison, and giving to those inspectors two thousand dollars each per annum. There is one thing I am opposed to, I am opposed to repeat it in respect to every public institution in this state, so that we should have twenty men under the pay of the state, in care of state institutnions, that I am emphatically opposed to. So much I desire to say with reference to the remarks made by the gentleman from Otoe, the Chief Justice of the state, and concurred in, tacitly at least, by my colleague, Judge Wakeley. That proposition I shall stand by, and contend for from first to last.

Now there are two or three plans it is worth while for us to compare together and see where we are coming out. Shall we have a superintendent of public buildings as such. For my own part I do not care whether you create the office as a separate office, or make the land commissioner take charge of the public buildings. The suggestion made by my colleague last upon the floor, that the superintendent of public lands might also be the superintendent of public buildings, has many considerations to commend it. Perhaps the duties of the two officers are not incompatible and may be discharged by one officer. Perhaps so. Upon that subject I have no debate with anybody. Now as to the matter of this board, I think that the officers that are mentioned in the proposed article and the composition of this board are misconceived by the committee, or by some of the gentlemen who have been upon the floor; altogether so. It is said—"prescribe the duty of these officers." Well, sir, the committee of the whole has reported an executive article in which it has created the office of Governor, of Secretary of state, of Auditor of Public accounts, of Treasurer, and of Attorney General. Are the duties of any of these officers prescribed in that article? In one single one of them? Gentlemen say "But their duties are referred to sufficiently by the title that is given them." Well, is not that just as true of the land commissioner or the superintendent of public instruction? It seems to me it is just as true with respect to one officer as to the other. It is impossible for the constitution to go into detail on this matter. Why, gentlemen, you never can harmonize the differences of this committee.

As was said by my colleague last upon the floor, the business of the constitution is to establish the offices and let the duties and details be regulated by the legislature. You have done that in respect to the six already created. Why not do so in respect to other officers.

Now, as to the board. The article says that the supervision of lands, etc., shall be under the general supervision of this board. The executive officer of the board; the man that shall sell the lands, etc., shall be the land commissioner, but the general matter of the care of these lands shall be in the charge of these state officers. That is all that is done. That seemed to be—it certainly was—the view of the committee when it had this matter before it the other day. And it seems to me now to have a great many considerations to commend it to our attention. Not that I am particularly strenuous about it; but I do not think the people of the state, knowing how the great body of the lands of the state are said to have been administered upon heretofore; I do not believe the people of this state will be gratified at all with the proposition giving the care of the great body of the public lands into one man's hands. A board, not to have the charge of the details; but to have general supervision of the management of the lands, seems to be necessary; seems to be a wise measure. Their duties, what the general disposition shall be, that they shall make of the lands, is in the charge of the legislature where it ought to be. They are directed by the legislature—the commissioner is directed by the legislature. They cannot have charge of the details. Now as to the propriety of having certain state officers associated with the land commissioner in the management of these matters. The propriety of having the treasurer connected with the land commissioner is evident from the fact that it never will answer at all to let the land commissioner receive the money and pay it to the treasurer. Why, if you do so there is no check on the land commissioner; and he may run riot with the proceeds of the sales. So there is a manifest propriety, as suggested by my friend on the left to have state officers connected. So again in respect to the Attorney General. Here are securities that will be in the hands of the land commissioner, which must be in the hands of some officer to enforce. Now, here is a question whether these securities shall be enforced in a particular case, or a certain class of cases. There is manifest propriety in having state officers connected together to consider the matter and act upon consultation, and act discreetly. These are the considerations in favor of creating this board. Not a simple advisory board, as suggested by the gentleman from Otoe—the board having a general supervision. I might go on and elaborate these views at greater length. For myself, while I am perfectly willing that the office of superintendent of pnblic buildings shall be dispensed with and the land commissioner have charge also of the public buildings, I am in favor of retaining the board just precisely as the committee reported, having the general supervision and charge of these public lands.

And then, above all things, I am in favor of providing that the legislature shall not go on and create offices, more for the sake of their being occupied and the salary apportioned to them being drawn by the appointees, than to have the duties of those offices faithfully discharged. Agents to discharge temporary duties may still be created, may upon certain exigencies be demanded, but offices, permanent offices, ought all to be provided for in the constitution, and nothing whatever left to the legislature. If so it will not be five years; it will not be one year before you will have the 20 officers charged with the care of the state institutions spoken of the other day by the gentleman from Lancaster. "This army of office holders will not only administer upon the bankrupt estate of the people, but you will have them squandering the public funds altogether."

Mr. MYERS. Mr. Chairman. So many propositions have been stated here and so many amendments offered, that an ordinary man like myself can hardly see his way through the wilderness; and if an error of judgment is committed I am certain he will have sufficient excuse to acquit him of blame in the premises. Now, sir, I am opposed to the increase of public officers; as a republican, not in a party sense. That we should not increase those state offices to such an extent as to become a burden to the state, to eat out the substance of the people without rendering adequate return for those services, or for creating offices without having duties to perform. But if there is one question more than another that requires the parental care of the people of this state, that requires their eternal vigilance, their unsleeping attention; it is the landed interests of this commonwealth—and in none has there been more apparent criminal negligence than in this department of the public wealth. And, now, sir, if we must create an officer to have control of this vast wealth that has been given to the people of this commonwealth by the general government; if we must have an officer of this kind, let us have one that will be acting on the responsibilities of his office, under oath, and under obligations such as the legislature may require. Let him, and him alone, be responsible for the discharge of the duties of that office, under the restraints as shall be made by the sovereign power—the legislature.

I, for one, am not in favor of dividing the responsibility among a half dozen or three individuals, but I want one man, who has the confidence of the people to be the custodian of all this property. I do not want, Mr. Chairman, any dodging of the officer who has charge of this department, by shifting from his shoulders the mis-management that may occur through the negligence of others. I believe that the individual who has been commissioned to a certain duty shall be held to the discharge of that duty, and if he fails to perform his duty, let him be impeached and removed from office. Let him have no escape by throwing the responsibility upon the shoulders of others. I oppose, as a principle, this increasing of public officers, but when there is one required as essentially as this, I am in favor of having him appointed, or elected by the people, if you please, who will be responsible for everything connected with the office. This is the custom in the management of affairs at Washington. The Secretary of State, for instance, is responsible for millions of dollars worth of public property. He has no advisory board and I would advise that the land commissioner be made a separate and distinct office, and that this office be an office of record. Let an office of record be there in that department of the government, so that a full and complete record of everything connected with the state lands may be kept, and I am sure there will be system and a sense of responsibility that will secure stability and safety. This office I believe to be necessary. It ought to have been established originally as a part of the state government in order that we might have had a starting point. I am sure that much of this public plundering and land grabbing would not now be upon the records.

Mr. ESTABROOK. (To Mr. Myers) Let me ask a question.

Mr. MYERS. Certainly.

Mr. ESTABROOK. You say that the secretary of the United States is an independent agent. Does he not act as one of a board—does he not get advice from the cabinet?

Mr. MYERS. He is secretary to the board, but he acts under the law. The president or no one else has no control over him. I would have the land commissioner under the control of nothing but the legislature. Such an officer I would have; such an officer I believe would answer the purpose better than to fritter away your responsibility from one officer to another like a homeopathic dose of medicine scattered out over a great deal of ground.

Mr. MAXWELL. Mr. Chairman. I would like to say a few words about striking out section two. I am in favor of leaving it to the legislature to say what offices shall be created. I was a member of the legislature at the time our present constitution was provided. Many offices were not created at the time, which have been found necessary since. We found after we became a state that we must have an auditor and other officers. These have been created by the legislature, but if it is proposed to allow the legislature to create offices just as they see fit, there is no use of our making a constitution at all, so far as these points are concerned. Is it not better to create all the offices that are absolutely necessary to carry on the government of this state, and so far as possible, prescribe their duties. The gentleman from Douglas (Mr. Estabrook) seeks to have the attorney general made a member of the board, because his advice will be needed. Why, is not that a part of his duties. I read from the laws of 1869.

"It shall be the duty of the attorney general, at the request of the governor, the secretary of state, the treasurer or the auditor to prosecute any official bond, or any contract in which the state is interested, deposited with either of them, upon a breach thereof; and prosecute or defend for the state all actions, civil or criminal, relating to any matter connected with either of their departments."

That is what the law now provides, so that nothing is gained by making him a member of the board. The objections of the gentleman from Otoe (Mr. Mason) may be obviated by a section like this:

"Resolved, that the legislature may provide that the duties of superintendent of public buildings shall be performed by the land commissioner."

Now if there should be no duties to perform the legislature might provide that the land commissioner should do the duties of both offices. It seems to me that if we don't provide this office, that the state will sustain great loss and it seems to me that this part, sought to be struck out, ought to be retained. Suppose the pay of this officer is fixed at $2,000 per year, in five years this would amount to $10,000. Now the state may lose twice that sum in a single large contract. I say it is necessary that there should be some one to take charge of the duties of this office. I believe there are already too many officers of a certain kind, but this office will abolish some of these officers. I trust that the section wiill not be stricken out.

Mr. CASSELL. Mr. Chairman. I will state that the committee had the question of economy in view when they made this report. It has been said, and truly, that we have a great many small offices which can be saved by the establishment of this office. The amount of the salary should not be made an important consideration, as the sum can be saved by doing away with a number of smaller offices.

The CHAIRMAN. The question is upon the motion to strike out that portion of the substitute which relates to the superintendent of public buildings. The substitute reads as follows:

"There shall be elected under the first election under this constitution, a land commissioner, who shall have charge and dispose of, in the manner provided by law, all the lands owned by the state, and shall give bond to the state in the sum of $100,000 and shall receive a salary of $1,800 per annum.

There shall also be elected at the first election under this constitution, a superintendent of public buildings, who shall have charge of all public buildings and grounds owned by the state and of the erection and repair of the same in the mode provided by law; who shall not be interested in any contract relating to the same, and shall give bond to the state for the sum of $100,000 and shall receive a salary of $1,800 per annum.

The CHAIRMAN. The question is on striking out that portion of the substitute which relates to the superintendent of public buildings.

The motion was not agreed to.

The CHAIRMAN. The question now is upon the adoption of the substitute offered by the gentleman from Cass (Mr. Maxwell).

Mr. MYERS. Mr. Chairman. Is that open for amendment now?

The CHAIRMAN. I suppose it is.

Mr. MYERS. Then, Mr. Chairman, I move to strike out that part relating to bonds and salaries, and leave that for the legislature to fix, to insert "shall give bond and receive such salary as the legislature shall prescribe."

The CHAIRMAN. The question is on the amendment of the gentleman from Douglas (Mr. Myers.)

The amendment was not agreed to.

The CHAIRMAN. The question is now upon the adoption of the substitute offered by the gentleman from Cass (Mr. Maxwell.)

The substitute was not adopted.

The CHAIRMAN. The question is on the amendment of the gentleman from Douglas (Mr. Hascall.)

Mr. BOYD. Mr. Chairman. If the gentleman will allow me I have an amendment which I wish to offer to be added to the end of the section.

The CHAIRMAN. Read the amendment as follows:

"And shall receive such compensation and perform such duties and be subject to such rules and regulations as may be prescribed by law; Provided, the office of land commissioner and superintendent of public buildings may be abolished whenever the legislature think them no longer necessary."

Mr. HASCALL. Mr. Chairman. I

will accept the amendment.

Mr. MYERS. Now, Mr. Chairman, I am opposed to the last clause of the amendment as offered by the gentleman from Douglas (Mr. Boyd) for I want to have these offices established by the constitution. I am not in favor of establishing a constitutional office and then placing it in the power of the legislature to abolish it whenever they please. I hope, sir, that my friend will take that part out of his amendment.

Mr. HASCALL. Mr. Chairman. As it stands now, I notice that the land commissioner and superintendent of public buildings are not mentioned in the section. I would ask my colleague to insert those names at the beginning of the amendment.

Mr. BOYD. I will agree to that. I thought it was inserted before in the section.

Mr. ROBINSON. Mr. Chairman. There was a substitute sent up by Judge Mason during the discussion. I move its adoption in the place of the whole section. I call for the reading of the substitute.

The CHAIRMAN read the substitute as follows:

"There shall be a land department which shall be in charge of a general land commissioner, who shall be elected by the people for three years and whose duties and salary shall be prescribed by law."

Mr. NEWSOM. Mr. Chairman. I move to strike out the words "by the people'.'

Mr. ROBINSON. I accept the amendment.

The CHAIRMAN. The question is on the adoption of the substitute just read.

The substitute was not adopted.

The CHAIRMAN: The question now arises on the amendment offered by the gentleman from Douglas (Mr. Hascall) to the original section.

The committee was divided and the amendment was agreed to.

Mr. MAXWELL. Mr. Chairman. I move to strike out all of the original report after and including the words "together with the auditor."

The motion was not agreed to.

Mr. WAKELEY. Mr. Chairman. For the purpose of testing the sense of the committee as to whether there should be elected one officer or two I move that the section be referred to the committee with instructions to provide for electing only one officer to be called Land and Building Commissioner.

Mr. KIRKPATRICK. Mr. Chairman I move the committee rise, report progress, and ask leave to sit again.

The motion was not agreed to.

The CHAIRMAN. The question is on the motion of Mr. Wakeley.

The committee divided and the motion was agreed to.

Mr. BOYD. Mr. Chairman. I move that the committee rise, report progress and ask leave to sit again, and recommend the re-commitment of the report.

The motion was agreed to.

Report of Committee of the Whole.

Mr. GRAY. Mr. President. The committee of the whole have had under consideration the report of the special committee on the subject of land commissioner and report the same back with the recommendation that the same be referred to the special committee with instructions to report a section providing for but one officer to be denominated Land and Building Commissioner.

The report was adopted nem.con.

Adjournment.

Mr. MYERS. I move we adjourn.

The motion was agreed to, so the convention adjourned at twelve o'clock and eight minutes.

AFTERNOON SESSION.

The convention met at two o'clock and was called to order by the president.

Engrossment.

Mr. REYNOLDS. Your committeen beg leave to report the Bill on Future Amendments and find it properly engrossed, and recommend it be read a th. d time and put on its passage.

Future Amendments.

Mr. LAKE. Mr. President. I would like to enquire if there is not a special order for two o'clock today.

The PRESIDENT. Yes, the Executive Bill. But this bill just reported is on its passage. All bills on their passage are always in order.

The Secretary read the bill on Future Amendments, as follows:

ARTICLE———

Future Amendments.

Sec. 1. Any amendment or amendments to this constitution may be proposed in the senate or house of representatives, and if the same shall be agreed to by a majority of the members elected to each house, such proposed amendment or amendments shall be entered upon their journals, with the yeas and nays taken thereon, and the secretary of the state shall cause the same to be published weekly for three months immediately preceding the next election, in at least one newspaper in every county in which a newspaper shall be published; and if in the legislature next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each house, the secretary of state shall cause the same again to be published for the time, and in the manner aforesaid, and such proposed amendment or amendments, shall be submitted to the electors of this state for adoption or rejection, at the next election of members of the legislature, in such manner as may be prescribed by law; and if the people shall approve and ratify such amendment, or amendments, by a majority of the qualified voters of this state voting thereon, such amendment or amendments shall become a part of the constitution; provided, that if more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

Sec. 2. Whenever two-thirds of the members elected to each house of the legislature shall, by a vote entered upon the journals thereof, concur that a convention is necessary to revise, alter, or amend the constitution, the question shall be submitted to the electors at the next general election. If a majority voting thereon at the election vote for a convention, the legislature shall, at the next session provide for a convention, and shall in the act calling the convention designate the day, hour and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same, together with the expenses necessarily incurred by the convention in the performance of its duties.

The law submitting the question shall be published for the time, and in the manner provided in the preceding section, as to proposed amendments.

The PRESIDENT. This is the third reading of the proposition. It is now on its passage, and only subject to amendments by unanimous consent. Secretary, call the roll.

The vote was taken and the result was announced as follows:—Ayes, 44; Noes——

Abbott,
Ballard,
Boyd,
Campbell,
Cassell,
Curtis,
Eaton,
Estabrook,
Gibbs,
Granger,
Gray,
Griggs,
Hascall,
Hinman,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Ley,
Lyon,
McCann,
Majors,
Mason,
Manderson,
Maxwell,
Myers,
Neligh,
Newsom,
Philpott,
Price,
Reynolds,
Shaff,
Sprague,
Stevenson,
Stewart,
Thummel,
Thomas,
Tisdel,
Towle,
Vifquain,
Wakeley,
Weaver,
Wilson,
Woolworth,
Mr. President.—44.

Absent and Not Voting.

Grenell,
Moore,
Parchin,
Parker,
Robinson,
Scofield,
Speice.

So the article was adopted.

The PRESIDENT. The question is upon referring to the Committee on Revision and Adjustment.

The bill was so referred.

Executive.

The PRESIDENT. The special order of the hour is the Executive proposition.

Mr. WOOLWORTH. If, as the select committee on the state buildings, etc., proposed, in its report, which was under consideration this morning, the officer or officers therein named be made branches of the executive department, the executive article will need to be somewhat modified, I would suggest that we let the executive article await on action upon the other matter.

The PRESIDENT. The bill has not been reported back and so cannot be acted upon.

Mr. WOOLWORTH. I do not see the necessity of engrossing until it has been perfected by the convention.

The PRESIDENT. It was sent to that committee by the convention.

Committee of the Whole.

Mr. WOOLWORTH. I move, Mr. President, that the convention go into the committee of the whole for the purpose of considering the judiciary article.

The motion was agreed to, and the convention went into committee of the whole—Mr. McCann in the chair

—for the consideration of the judiciary article.

Judiciary.

The CHAIRMAN. Gentlemen, you have for consideration, the article, the report of the Judiciary Committee. I will read the first section:

Judicial Department.

Sec. I. The judicial powers of this state shall be vested in one supreme court, district courts, county courts, justices of the peace, police magistrates, and in such other courts inferior to the district courts as may be created by law for cities and incorporated towns.

The CHAIRMAN. Section one is before the committee.

Mr. LAKE. There is one provision here that I desire to call the attention of the committee to. I think that the section should be amended. It is provided that the judicial power "shall be vested in one supreme court, district courts, county courts, Justices of the peace , police magistrates, and in such other courts inferior to the district courts." I am inclined to the opinion that the limitation should only be extended to making them inferior to the Supreme Court. Now it might be the desire to create a court in the city that should have a jurisdiction equal at least, to that of the district courts; and if this provision remains as it is in this section it could not be done, and I have heard it frequently expressed in public that it might be necessary for the best interests of certain communities, hereafter, at some time, to create a court for cities that should have a jurisdiction, at least, equal to that of the district courts; perhaps not so extensive in some respects but in respect to crime that should have a jurisdiction as great as that of the district court. And for the purpose of testing the sense of the committee, I move that the words "district courts," in the second line, be struck out, and the words "supreme court" inserted.

Mr. HASCALL. Mr. Chairman. I shall vote against the proposed amendment. I like this section as reported by the committee. The report provides for district courts to try not only civil, but criminal cases; as this is the case now, our laws as now passed, mention district courts, now if you amend this, the laws will have to be revised and the Supreme Court referred to instead.

The CHAIRMAN. The question is upon the amendment offered by the gentleman from Douglas.

Mr. WAKELEY. Mr. Chairman. If it was intended by the law to confer upon municipal courts a jurisdiction equal to that of district courts, I suggest to the Chairman of the committee that it would be better to change the section by saying "not exceeding the jurisdiction of the district courts," than to say "inferior to the district courts." I think it would not be proper to confine the jurisdiction of any other court by reference to the jurisdiction of the Supreme Court. I agree with the opinion of my colleague last up; (Mr. Hascall) the section is right as it stands. The section as drawn, meets my views and I am opposed to any amendment.

Mr. LAKE. I have no feeling on this subject at all, I brought it to the attention of the committee in order that it might be considered before the section was adopted. The section, as reported by the committee meets my favor, but for the purpose of bringing the matter before the committee which has been spoken of, I mention it now.

The CHAIRMAN. The question is upon the amendment.

The amendment was not agreed to.

The CHAIRMAN. The question is upon the adoption of the section.

The first section was adopted.

The Chairman read the next section as follows:

Sec. 2. The Supreme Court shall consist of three judges, a majority of whom shall be necessary to form a quorum, or to pronounce a decision. It shall have original jurisdiction in cases relating to the revenue, mandamus, quo warranto and habeas corpus, and such appellate jurisdiction as may be provided by law.

The second section was adopted.

The Chairman read the next section, as follows:

Sec. 3. At least two terms of the Supreme Court shall be held in each year, at the seat of government, at such times as the legislature may provide.

Mr. WOOLWORTH. Mr. Chairman. The time of holding the courts in the different counties should be regulated. The holding of these courts is done very much at haphazard. I am not so familiar with the course of doing business in the first district as in the second district, and any gentleman who has conducted business in that district will agree with me that it is the cause of great difficulty in doing business in the courts of that district. Sometimes the terms in two counties are brought so close together that the business in one county could not be transacted before the business in another county commences. I have known it to occur that there were three courts in session at the same time and I had engagements in each. My engagements are not so numerous as those of other members of the bar. I shall move the committee strike out of this section, the last clause, begining at the word "government." I wish to have it fixed by the judges of these courts instead of the legislature.

Mr. LAKE. Mr. Chairman. I agree with all the gentleman has said in respect to the difficulties of doing business in the courts, not only in the second district, but throughout the state. I believe there has been no time, since I have had the honor of presiding in the second district, but there has been a law upon the statute books requiring courts to be held in two counties at the same time in that district. The first law we had after we became a state required that the fall term should be held in the counties of Seward and Saunders at the same time. The last legislature had their attention called to that fact and were asked to fix the time of holding the terms of court in the second district so that there should be no clashing. A bill was prepared, which, it was supposed would fix that, but by an amendment which was afterwards tacked on, the time of holding courts in Seward and Butler came on the same day, so that we have been compelled to leave a large amount of business unfinished in various counties of the districts from time to time on account of the peculiar provisions of the law fixing the time of the terms. Now if there could be a remedy applied there it would secure a good result, not only to the people of the district, but also to the people of the entire state. The difficulty is that most of the counties desire to have their courts held about the same time of the year in a season not to interfere with the farming interests, and whoever shall have the fixing of the time of holding courts, should fix them with reference to those times as near as possible, so as to make them as little burden to the people as possible. If that is left to the legislature that would perhaps be fixed to work as harmoniously as they do now. I am sure they could be no worse than they have been for the past four years. I think the amendment should prevail.

The CHAIRMAN. The question is on the amendment by the gentleman from Douglas.

The amendment was not agreed to.

The CHAIRMAN. The question is on the adoption of section three.

Section three was adopted.

The Chairman read the next section as follows:

Section 4. The judges of the supreme court shall be elected by the electors of the state at large, and their terms of office shall be six years, except at the first election, as hereinafter provided.

Mr. GRIGGS. Mr. Chairman. I move to strike out section four and substitute the following:

The Chairman read the substitute as follows:

"The state shall be divided into three grand divisions to be denominated the Southern, Central and Northern, until otherwise provided by law, and there shall be elected from each of said grand divisions one judge of the supreme court who shall be elected by the electors of the state at large and whose term of office shall be six years except at the first election as herein provided."

Mr. GRIGGS. Mr. Chairman. I don't wish to say anything particular upon this motion, except that I believe that it would suit the people of the state to have one of the Supreme judges come from each one of these divisions.

The CHAIRMAN. The question is on the adoption of the substitute offered by the gentleman from Gage (Mr. Griggs.)

The substitute was not adopted.

Mr. MANDERSON. Mr. Chairman, I move to strike out in the second line the word "six" and insert "nine."

The motion was not agreed to.

Mr. WEAVER. Mr. Chairman. I move to strike out all in the first line after the word "elected" down to the word "six" in the second line, and insert the word for, so that it will read: "The judges of the supreme court shall be elected for six years, except at the first election as hereinafter provided."

Mr. MYERS. Mr. Chairman. I move to strike out the word "six" in the amendment and insert "fifteen.” On this I propose to say only a few words. The judges of our courts are set apart for the performance of a special, distinct and more important duty than any department of our civil government. We ought to elect men of ability in whom the people have confidence and when we secure such we should not readily dismiss them. In the old times, Mr. Chairman, our judges kept their high positions for life, or during good behavior, and we had judges in that day whose names are still household words throughout our land.

Mr. STEVENSON. Mr. Chairman. I rise to a point of order. What is the question before the house?

The CHAIRMAN. The question is on the amendment offered by the gentleman from Douglas (Mr. Myers). The Chair understands the gentleman is in order.

Mr. WEAVER. Mr. Chairman. I rise to a point of order. The gentleman's amendment was to strike out my amendment and insert “fifteen,” My amendment had not been acted upon. I don't see how we could strike it out until we got it in.

Mr. MYERS. I do not desire to proceed out of order, but desire to state my reasons.

Mr. STRICKLAND. Mr. Chairman. I am opposed to the motion my colleague, but make the motion to strike out “six” in the section and insert “fifteen” to give him an opportunity of explaining his views.

The CHAIRMAN. The gentleman from Douglas (Mr. Myers) has the floor.

Mr. MYERS. It is not very material to me in what position my amendment stands but it is strictly in order. Mr. Chairman, I have formed attachments for able judges who have ornamented the bench and if a judge is elected by the people, and of course they will elect judges in whom they repose full confidence, it is an injury to the public service that they should be dismissed. In olden times judges were appointed for life, in older states for ten or fifteen years and I do not see why we cannot adopt the same principle in the state of Nebraska. Let us elect the foremost men at the bar as our judges, set them apart from the ordinary pursuits of life and dedicate them to the public service. They become separated in their associations from the rest of their fellow citizens. When a member of the bar becomes thus situated and is dismissed from the public service at the end of six years he has to begin life anew, his business is broken off, his associations are gone in a measure, and he is at sea, almost without a rudder and compass, and then in another point of view, we elect a judge fresh from the bar, it takes him six years until he becomes habituated to the practice of the court. It is necessary for him to change his mode of thinking, to get rid of his exparte ideas he entertained as a member of the bar. It is for these reasons that I shall vote for the longest time, and I venture to make a prediction that as the state grows older it will give the judges fifteen years of public service. I hold that a judge is set apart by his fellow citizens to serve his country as a judge, and as a judge he must be separated from religious and political disputes which agitate the country. How is it our judges in the old states have become immortal, because they have been in office and have served their country faithfully and well.

Mr. KIRKPATRICK. Mr. Chairman. I think the gentleman is mistaken. He claims that formerly judges were elected for a long period, I believe those judges who rose to eminence were really always appointed. I think some of the judges of the supreme court have been elected. I hope the amndment will be voted down.

The amendment was not agreed to.

The CHAIRMAN. The question is on the amendment of the gentleman from Richardson.

The committee divided and the motion was not agreed to.

The CHAIRMAN. The question is on the adoption of the section.

The section was agreed to.

Mr. TOWLE. Mr. Chairman. I have a section which I wish inserted between sections four and five.

The chairman read the section as follows:

"At the first election of judges of the supreme court, each elector may cast as many votes for one candidate as there are supreme judges to be elected, or may distribute the same or equal parts thereof among the candidates as he shall see fit, and the candidates highest in votes shall be declared elected."

Mr. HASCALL. Mr. Chairman. I move that be postponed until we reach the report of the committee on electoral and representative reform. I think it can be disposed of at that time.

Mr. TOWLE. I will withdraw my amendment.

The Chairman read the fifth section as follows:

Sec. 5. The judges of the supreme court shall, immediately after the first election under this constitution, be classified by lot, so that one shall hold his office for the term of two years, one for the term of four years and one for the term of six years; and at subsequent elections the term of each of said judges shall be six years.

The fifth section was adopted.

The Chairman read the sixth section as follows:

Sec. 6. The judge of the supreme court having the shortest term to serve, not holding his office by appointment, or election to fill vacancy, shall be the chief justice and as such shall preside at all terms of the supreme court, and in case of his absence the judge having in like manner the next shortest term to serve shall preside in his stead.

The sixth section was adopted.

The Chairman read the seventh section, as follows:

Sec. 7. No person shall be eligible to the office of judge of the supreme court unless he shall be at least thirty years of age, and a citizen of the United States; nor unless he shall have resided in this state at least three years next preceding his election.

The seventh section was adopted.

The Chairman read the eighth section as follows:

Sec. 8. The supreme court shall appoint a reporter and clerk of said court, who shall have their offices respectively for the term of three years, subject to removal by the court, and whose duties shall be prescribed by law.

Mr. KIRKPATRICK. I would suggest that there might be a better word substituted for the word "have."

Mr. LAKE. The word "hold" was intended to be inserted . I suggest that it be inserted.

The section was adopted with the amendment.

Mr. MANDERSON. There is nothing said about compensation for the reporters.

Mr. WAKELEY. I would suggest to the committee whether it would not be better to provide that their compensation should be prescribed by law. I move to insert the words "and compensation," after the word "duties" in the second line

Mr. LAKE. That is unnecessary, I would inform the gentleman, Mr. Chairman, because we have a provision subsequently here which provides for the compensation of all officers not provided for in the article itself.

Mr. WAKELEY. I will withdraw the amendment. I see it is unnecessary.

The eighth section was adopted.

The Chairman read the ninth section, as follows:

Sec. 9. The district courts shall have original jurisdiction in all cases of law and equity, and such appellate jurisdiction as is or may be provided by law.

The ninth section was adopted.

The Chairman read the tenth section, as follows:

Sec. 10. The state shall be divided into four judicial districts, in each of which shall be elected one judge, who shall be judge of the district court therein, and whose term of office shall be four years, and until otherwise provided by law said districts shall be as follows:

Mr. GRIGGS. Mr. Chairman. I move the adoption of that part of the section.

The CHAIRMAN. I will read the whole section through first:

First District—The counties of Nemaha, Richardson, Johnson, Pawnee, Gage, Jefferson, Saline, Fillmore, Clay, Franklin and all the counties west thereof lying entirely south of the Platte river.

Second District—Otoe, Cass, Lancaster, Seward, York, Polk, Hamilton, Hall Buffalo, Dawson and Lincoln.

Third District—Douglas, Sarpy, Saunders and Butler.

Fourth District.—Washington, Dodge, Colfax, Platte, Burt, Cuming, Stanton, Madison, Wayne, Pierce, Dakota, Dixon, Cedar, L'Eau-qui-Court and the counties lying west thereof.

Mr. HINMAN. Mr. Chairman. I wish to offer an amendment. To strike out the word "four," in the first line, and insert the word "five;" also to divide the district, as submitted by me.

Mr. HASCALL. Suppose we vote on each separate proposition first.

The CHAIRMAN. The Chair will read the proposed amendment:

First District.—Nemaha, Richardson, Johnson, Pawnee, Gage and Jefferson.

Second District.—Otoe, Cass, Lancaster, Saline, Seward, Saunders, and Butler.

Third District.—Douglas and Sarpy.

Fourth District. — Washington, Dodge, Colfax, and all counties north of the fifth standard parallel.

Fifth District.—Platte, Boone, and all counties west of the sixth principal meridian and south of the fifth standard parallel.

Mr. STRICKLAND. I would suggest that the section had probably be better sent back to the committee so that the districts could be re-arranged. I would like this question decided so that we can see what will be done with the proposition. I call for a division of the question.

The CHAIRMAN. The question will be then, upon striking out the word "four" in the first line, and inserting the word "five."

The Convention divided and the motion was agreed to.

Mr. STRICKLAND. Unless the gentleman from Lincoln, who offered those amendments, desires to have them considered now, I will make a motion.

Mr. HINMAN. I would like to hear the discussion.

Mr. LAKE. I hardly think it would be proper to attempt to form these districts at the present time. The house is not quite full now, and the question might be left until the article has been gone through with. It is not altogether certain yet that a majority of this body will be for the creation of five districts. There has been no discussion; and, for one, I am just as well satisfied you might as well call for five wheels to a wagon as for five districts in this state. I am informed that this matter has been canvassed, and certain members pledged to support it. If that is so there is not much use of discussing it. And we had better wait till we get into the house. All know that even when the business of the supreme court and district courts was done by three judges that, with the exception of perhaps the second district, they were not overworked. And in that district the judge has not been overworked, although he has not been able to do all the business.

Now, it is proposed to have four additional judges; and it seems to me that, as a tax payer and a member of this convention representing the best interests of the people, and providing a judiciary which shall meet all the requirements of the business and of their wants, that the increase to four judges was ample for that purpose. But if members of this convention think otherwise, why just let them put themselves on record. It was discussed in the judiciary committee at length, and we came to a conclusion there that only four were necessary. In regard to the dividing of the state into districts we are not, perhaps, required, at this time, to arrange them satisfactorily. It would perhaps be better to refer that to some committee to arrange the districts after the number is determined upon by the convention. And I move, Mr. Chairman, that the arrangement of the districts be deferred for the time being, and that we proceed to the consideration of the subsequent sections of this article.

Mr. WOOLWORTH. I did not vote on the question whether there should be four or five districts at all. I did not know enough about the matter to reach a conclusion that was satisfactory to myself, and so I left it. I thought that when we came to consider how the state should be districted I would then hear from persons from different parts of the state as to their ideas on that matter; and from that discussion I would hear something that would aid me in reaching a conclusion upon that subject; so that when I came to vote in the convention I should vote intelligently as far as I am concerned.

Now I am not content with what my colleague upon the other side of the house has said—that gentlemen should place themselves upon the record. For that matter I don't care much for the record myself, nor how anybody else stands upon it, I would, however, like to hear from the gentleman who are in favor of the five districts, how they propose to redistrict the state. I cannot see that, in the western part of the state, there is really any necessity for another judge. I am in favor of going back to the four judges, leaving it to the legislature to increase the number.

Mr. MASON. Mr. Chairman. I desire to say here, that the present time judges can do all the work in this state, and not work to exceed six months in the year. Now if it be the purpose of this convention to create a supernumerary, a judge who is to be an ornamental instead of useful. I have nought to do, except to enter my protest against it. At present, of the commencement fees from the various districts a large majority were received from the second district, and the smallest amount is received from the third district. I may say here that the dockets in the First district are free; and yet the supreme court business has been attended to and I have not been busy more than 8 months in the year. Why if the four districts should double in population during the next five years, your district judges, not having the supreme court business to attend to, can do it and keep the docket clean; and I undertake to say that the business will be better done, if it is done by four judges instead of five, and they should receive the pay of the five. The judges will then be employed most of the time, and will come to the work with a brain trained to work and decide points rapidly. I must say, I was overwhelmed with astonishment when this vote for five district judges was announced. I believe this is the only time I have been on my feet this afternoon. I am constrained to say this much under great difficulties. I must say it is creating a supernumerary without reason, and taxing the people without cause. I undertake to say that three judges can do all the business of this state for the next four years. In view of this fact, of increase in the districts the committee agreed upon the fourth judge. For these reasons, Mr. Chairman, I shall make what battle I make in respect to this matter against the five judges, because I think it wrong. I think it is against the best interests of the state. Another thing, the legislature can be given power to note the increase of business in the different districts, it will take the necessary steps to let the fountains of justice down upon the people, through a greater stream. Where is the man whose business is left undone in the courts, and I hold that the judges are not employed more than six months in the year.

Mr. HINMAN. Mr. Chairman. The gentlemen who live in the section of country that is thickly populated along the Missouri river, if they would get out in the sparsely settled country, they would, perhaps, form a different opinion, as to whether business is done or not. Now let us look over the matter: Cheyenne, Madison, Sherman, Howard, Valley, Greeley and many other western counties have no courts, but are attached to other counties for judicial and revenue purposes. There never was a term of court in Lincoln county that did all the business in the county. The terms of court are so arranged generally throughout the state that there is only a week allowed for each of the different counties, and in that week, they rush through everything, be the amount large or small. In Lincoln county, we had a murder case which was rushed through in one day and night, and why? Because the judge was anxious to get through the business of the court in a week when the case should have taken at least a week. The witnesses were scattered over the county, and it was impossible for the sheriff to get them together in the short time allowed him. There are reasons why we should have more courts; the business is not done in our county; it is not done in other counties; because the judge does not see fit to call court in our counties. These eastern judges do not care much for us western fellows. We are not down here very often. The 26th district, which I represent, includes an area of a large portion of the state. Lines five hundred miles long are drawn from east to west and the state is divided into three districts; and if the people have a mind to come the entire length of the state to have their business done, they can, otherwise the business is not attended to. The result is in many instances we have to resort to mob law in order to have anything like law in our part of the country.

Mr. Chairman, I think it is necessary to have a western man who is identified with our interests, who travels around our country and knows something about the people. These are my reasons for asking for a fifth district. We are willing to take all of that portion of the state lying west of the sixth principal meridian. We have in the western part of the state a vast country rapidly filling up, they have no representative in the legislature and no judge. If you will give us that you may cut up your little triangular handkerchief piece as you please. If you refuse to grant it we will soon have a population there which will speak in tones that will make you listen.

Mr. MASON. Mr. Chairman. I believe in giving to every part of the state sufficient courts to attend to their business; but, when gentlemen assume to speak for posterity I am inclined to think posterity will do for itself.

Now I can speak for the district lying south of the north line of Otoe county, that no county commissioners have ever asked for a court in any county in that district but what it has been had, within a short time after the publication in the paper, and the business has been done and dockets kept clean, the labor required not exceeding more than six-months in the year. Now this being the case with three districts and you add the fourth district, where I ask, is the necessity of the fifth? I stand here to say that I do know that three judges can do the whole business of the state and then not labor more than six or seven moths in the year. I am in favor of four but I am not in favor of five districts, but I would give to the legislature the power to increase the number whenever they find any judge over-worked, or any portion of the people without a court.

Mr. ABBOTT. How long would it take you to go from Otoe county to Cheyenne county?

Mr. MASON. By railroad sir, I think it would take about thirty-six hours.

Mr. HINMAN. Mr. Chairman. I wish to call the attention of the committee to the fact that Cheyenne county and many other counties, and much territory in the northwestern portion of the state is attached nowhere for judicial purposes, it is left out of this report entirely. In reply to the gentleman's remarks about the fostering care of the east, I will tell you something about what Lincoln county has done. They have grappled with that monster corporation, the U. P. R. R. Co. and beat them in a suit, and we collected the taxes of 1869, amounting to about $36,000.00, a portion of which is now deposited in the bank at Omaha, to-wit: about $23,000.00, ready for depositing in the state treasury whenever settlement is made with the county commissioners, and the proper time arrives. The R. R. Company's attorney, Andrew J. Poppleton, asked our county commissioners to wait on the company for the taxes of 1870 until July 10th. The commissioners feeling pretty good and flush with money consented to wait. What was the result of that waiting?

On the sixth day of June, 1871, in the legislature of this state a bill was introduced by one Gerrard of Platte county who lives 200 miles from Lincoln county, and 350 miles from Cheyenne county. He introduced a bill into the senate creating an organization in the county of Cheyenne, giving them the right to collect and receive taxes which had been levied by Lincoln county for the year 1870, to the tune of $32,000.00, out of $34,000.00 levied, thereby virtually robbing this state of $22,000.00 and Lincoln county of $12,000.00 which had become delinquent.

The U. P. railroad never will pay Cheyenne county a dollar of that $32,000.00, nor do they intend to pay it. Do you suppose they can keep that county organized? Its officers have to file bonds and oaths and they have to elect officers without which they cannot keep up their organization, and I will engage that a man could go there with a thousand dollars and burst up the pretended organization of that county and then where is your $32,000.00? If this man Gerrard had lived in Lincoln county and came back with that load on his shoulders, I am afraid he would have stretched hemp. The bill was presented the rules suspended, and it was rushed through both houses in one day and approved by the acting governor. There was no cne on the floor from this county, containing a belt of territory 300 by 400 miles, to say anything for us and prevent this steal. If this is all of the fostering care which is to be extended over us by the eastern portion of the state, please to count my constituency out.

Mr. HASCALL. Mr. Chairman. I am sorry it becomes my duty to correct the gentleman from Lincoln (Mr. Hinman) on several matters. I am with him on the main proposition and believe they ought to have a judicial district out west, still some propositions he has presented here are certainly erroneous and calculated to mislead the minds of gentlemen present. In the first place the gentleman says that the last legislature created the county of Cheyenne. I I ask him when he read his statutes last? If he will read the session laws of 1867, he will find the county of Cheyenne was created at that time. Now the facts of the case are these. This county was attached to Lincoln county for revenue and judicial purposes, that is the reason why they have been transacting the legal business and levying the taxes of Cheyenne county. I fail to see wherein Lincoln county has any right to taxes collected in Cheyenne county. I wish to say a word for Mr. Gerrard who is absent. He did not deprive the state of any of its taxes, nor deprive Lincoln county of any rights in taxes to be collected, but merely apportioning the money to be received from these taxes equitably between Cheyenne and Lincoln counties. He talks about busting, I think it would be just as easy to crack the Rocky mountains as burst Cheyenne county. This same gentleman, he speaks of, introduced a bill into the legislature by which Lincoln county was enabled to pay an attorney they employed to collect these taxes. If I recollect right, after the law was passed there was a little ring formed in Lincoln county that put its hand deep into the treasury and took out to the tune of about $5,000. With regard to these judicial districts, we want to enquire in the first place is it unusual or unreasonable. I am prepared to say the proposition of five districts is neither unusual nor unreasonable. The state of Kansas formed a constitution in 1859 which said the state shall be divided into five judicial districts in which judges shall be elected and hold court. Their population at that time was less than 100,000. Here we have, according to the census 126,000, and gentlemen will not deny that we have increased 40,000 since. There are important interests in connection with Lincoln, Cheyenne and other counties that requires the presence of a judge in that locality, and I think the interests of the western portion of the state demand that we should make a district out there. We have at least fifty organized counties, and if you divide them by five, that would make at least ten counties for each judge to attend to. A term of court should be held in each county at least once a year and oftener if necessary. If they do that their time is occupied. We are not making a constitution for this present moment. It must necessarily be ratified this fall. The necessities of the state will certainly require all that is claimed for these judicial districts, we are looking ahead to the next spring. This state has been very little understood, and I believe when it is fully understood, when we bring all the modern appliances to bear, the western part of the state is going to be filled up with the eastern part. A few years ago it was thought that we required three judges to transact our business, now the population of the settlements west of the sixth principal meridian are more important than the whole state was at the time when they thought three judges could transact this business. It is an advantage to have judicial districts well defined, their limits well understood, courts established within those limits and those judges and courts getting in successful operation transacting business. They might be one year in advance, still I claim the state is the gainer by it. By looking right along this southern line you propose to attach to Richardson, and Nemaha counties, Nuckolls, Franklin, Webster and Harlan, and other counties. And what do you propose further? You propose to attach to Otoe and Cass counties that of Cheyenne, which is 400 miles away. Now, in the first district there is no railroad to get to distant towns, and in the second district, if you connect by railroads, you put the judges to great expense to reach them, and make the expense of litigants very great too. I say it is necessary to have a western district, that the people may have a judge residing among them and whom they may reach without great expense; and that the judge may know the different counties in which to hold court, when to hold it, and how to hold it. An impartial trial is a consideration that citizens should look well to. When we take into consideration that a state with a much less population than yours adopts the five district system, and this constitution gave power to the legislature to increase it to as many more as they saw fit, and they have since done so; showing their wisdom in adopting it, and the necessity of the increase. There are counties in the north standard, such as Madison, Pierce, Wayne and others which ought to have courts and it is important for their material prosperity that they should have them. I live in a river town and represent a river county, and I believe they would not object. I do not believe that these new counties need any fostering. Let them do as the older counties did before them.

For that reason I hope we will adopt a fifth district system, and I think the convention will adopt it. At any rate, members of this convention have no right to suppose the convention will do otherwise. The proposition of the friends of the five district scheme is here, and we can build from it just as well as to refer it to a committee. The gentleman from Otoe, Mr. Scofield, I believe, submitted a proposition to divide the state into five districts, and those counties were well grouped together. And if that propostion is not satisfactory then we can build on the one offered by the gentleman from Lincoln. Mr. Hinman. And in the fore part of the consideration of this article it was mentioned about establishing courts in cities. I believe it would be found, in practice to work bad, and if the district court in Douglas county is so crowded with business, and it is necessary to have another court then let us have another court that can dobusiness without having one with strange names, and made for politicians to occupy fat positions.

Mr. KIRKPATRICK. I rise to make a motion. I understand there is no question before the committee—.

The CHAIRMAN. There is. Upon the motion of the gentleman from Douglas to defer the formation of the districts.

Mr. HINMAN. Mr. Chairman. I did not intend to occupy the floor as long as I have today during the session of this convention; but there are some things that need explaining, with regard to the little ring in Lincoln county, spoken of by the gentleman from Douglas—

Mr. HASCALL. I did not allude to the gentleman from Lincoln at all. I believe he was outside the ring.

Mr. HINMAN. I am not here representing B. I. Hinman. I am representing my constituents and defending them from foul aspersions; and among them are the inhabitants of Cheyenne, Buffalo, Dawson, Lincoln and various other counties that need not be mentioned here. I live in Lincoln county and I know those officers are above reproach. Charles McDonald has been known for years in this state; longer, perhaps, than the gentleman from Douglas ever thought of being known and is a man of known integrity and responsibility. M. C. Keith, with his partner, is probably worth $100,000 and is a man of integrity. M. H. Brown is worth from $10,000 to $20,000 and a most respectable and worthy man; and these are the commissioners that he accuses.

To show the plausibility of this story about a ring let us see what this attorney hired in the tax case had to do. The U. P. R. R. Co., has about 500 miles of railroad in this state. They own equal to twenty miles breadth of land the entire length of the state and that through the best and longest valley in the state. This road extends about 700 miles beyond the state with the same strip of land joining, or connecting with the Central Pacific in Salt Lake valley and is worth many millions of dollars. She is an immense company. It was necessary for some county to grapple with this power, and fight on this tax business, and collect it. Lincoln county did not wait like other counties for some one to collect these taxes for her, but took hold of the matter and sued them for the taxes. While she was doing so, Cheyenne county, to the west, and Dawson, Buffalo, Hall, Merrick, Colfax, Platte and Dodge counties on the east, and all the counties along that line of road with all their wealth, did not compel the payment of taxes, but waited for us to do it.

Mr. GRAY. Except Dodge county. She got her money.

Mr. HINMAN. It determined the question whether Lincoln county got $36,000 a year for years to come and the state about $24,000 of that amount per year in taxes and whether that company should or not pay her taxes for the entire length of her road in this state. Lincoln county considered that her best course was to employ an attorney that was worth the money, and who could meet the company on their own terms and recover the tax. How could she get such an attorney? Could she pick up a country pettifogger and pay him five dollars? She employed an attorney without any agreement as to fees. When the suit was determined $5,000 was asked. There was some hesitation at first unless the matter should be followed to the supreme court by the attorney; but relying on the honor and liberality of their attorney they paid him the amount asked. I ask any respectable lawyer in the state if that fee was too much, considering the circumstances? There was no ring about it. I will vouch for that and I think that I am good for the amount. I am astonished to see the gentleman from Douglas (Mr. Hascall) squirm, I never have intended to cast any suspicion on any gentleman in this hall and have always considered all members of that legislature who are on this floor as perfectly honorable gentlemen; but I was astonished to see him rise and cast aspersions at random without knowing what he was talking about. I am sure that I have not accused anyone of selling out to the U. P. R. R. Co. The gentleman knows about as much about Cheyenne county as he does of other matters of which he has spoken and he does not know much about either of them. He says Cheyenne county was created, probably before Lincoln county. I do not know when the territory called Cheyenne county was marked out on the maps, or embodied in the laws of this state, but I ask him why he got in that little article in that law, stating "that Cheyenne county is hereby declared to be a duly organized county, for judicial and revenue purposes,"and then declare that she might go on and collect taxes levied by another county over a year previous to that organization?

Mr. HASCALL. I did it because the representatives of that district said it was necessary.

Mr. HINMAN. Is that the reason? He voted for it because the representative told him to do so. I fear that too many of our senators voted in that way.

Now, Mr. Chairman, about Cheyenne being entitled to the taxes. This tax was levied in July 1870—

The CHAIRMAN. The gentleman will confine himself to the question.

Mr. HINMAN. This is in reply to the gentleman from Otoe (Mr. Mason) concerning their protecting care of the west and to show that there was no ring formed in Lincoln county and how the legislature whilst impeaching David Butler for $15,000 or $20,000 could reach their long arms 360 miles and steal of the state and Lincoln county $34,000 and that Lincoln county desired to be excused from that fostering care.

Mr. ROBINSON. Mr. Chairman. I want to say a word or two before this motion is put. I am opposed to deferrnig this matter. I am in favor of five judicial districts, because three have been found miserably deficient. Now, sir, if three districts have answered so well, why is it there is so much complaint. Here in Lancaster, we have had, until this year, but one term of court. Jurors have been in attendance, witnesses summoned and most of the expense of having a term of court was gone through with. It may be different in the first judicial district, but in the second judicial district we certainly have cause to complain. I undertake to say that, in another three years, that even with the wonderful industry and agility of my friend from Otoe, Judge Mason, one judge cannot do the business of this district. Perhaps the gentleman from Otoe (Judge Mason) was able to satisfy the people of his district where only one term of court per year was required but when more terms are required we cannot get on as we have done. I hope Mr. Chairman this motion will not prevail but the mater will be fixed here and now. If the gentlemen want to vote in the convention, vote upon the record we can have them.

Mr. LAKE. Mr. Chairman. The Gentleman from Lancaster who was just upon the floor has made certain inquiries. I desire to answer them. He wants to know why they have had but one court each year in Lancaster county. On the occasion of two terms of court here, the members of the bar of this county—among them the gentleman himself—requested me in writing that the court be not held. The paper was also signed by the county commissioners. The first year court was held in this county, but one term was provided for by law, and that was held. Other years, business was not properly attended to perhaps, but it was caused by the bad arrangement of the courts, as provided for by the legislature. On two occasions, adjourned terms have been held inorder to keep up with the business, as there was only one week allowed us to do work which required at least two weeks. It seems to me the responsibility should be placed where it belongs—upon the legislature. Upon one occasion, the next week after the Lancaster county court a term was to be held in Seward county. It began on Monday and the gentleman himself, with myself and others was compelled to go over to Seward on Sunday. I state right here, that if the business of this district had been properly arranged, it could have been done by a single judge. If the terms had been arranged so that when business commenced in any one county, it could have been finished up before going to another county it would have been all right. There has never been a time when a term of more than a week could be held in Lancaster county; it has always been necessary for court to be held in some other county the next week. It is impossible, of course, for the judge to be at the county seat of both counties in a single day. The courts of Seward and Saunders counties for 2 years past have been filed for the same day, by the legislature. In regard to this postponement, I am satisfied that no judicial district can be formed in committee of the whole in any reasonable time. The different propositions that gentlemen are disposed to make can be referred to a special committee appointed to make this district. When the matter can be referred again to the committee of the whole house to consider after the special committee makes a report. Now, for the purpose of showing the amount of business done by the district of country represented by the gentleman from Lincoln, I will refer to a communication from the auditor. The chief justice has told us he has been able to perform all the business of the first district without difficulty at all, only laboring about six or seven months in the year. Now referring to this report of the auditor, I find that the number of cases in the single county of Otoe, over which the chief justice presides has been five hundred and thirty eight civil cases, in which commencement fees have been paid. To this must be added a great number of cases where commencement fees were not paid, and also the criminal business, administrators sales, etc. Referring to the district presided over by Mr. Justice Crounse in which is the section the gentlemen from Lincoln represents upon this floor, and we find that the whole number of civil cases commenced in that entire district falls far short of the number of cases in Otoe county alone. They amount to only 448 cases against 538 in Otoe county alone. Now what is the number of cases in the region of country represented by the gentleman from Lincoln and Platte county 47, Lincoln county 65, Hall county 16.

Mr. HINMAN. Will the gentleman allow me to state that there are a number of criminal cases in which there are no fees paid, and not included in that number.

Mr. LAKE. The number is proportionate with the rest of the counties of the state. I refer to these figures to show the business of these counties. Mr. Justice Crounse has informed me that he could perform all the duties of that district in five months. We have a law providing for the county commissioners to request the holding of a term of court. Justice Mason has said that he always called them in his district when requested. I have done the same in my district, with but one exception.

The county commissioners of these back counties are sometimes very ioath to ask for terms of court. This was the case in Butler county, and when the attorneys did prevail on the commissioners to call a term to try those Indians the rest of the term was only the trial of one case, a little civil case where seventy-five cents was involved for ferrying a man across the steamferry. With the enlarged jurisdiction that we propose to give the county courts there will be but little business left them except a few equity cases. Of course I expect in the county of Lincoln, they ought to have their courts there held promptly. I think they ought to be held promptly in every county.

The business of Lancaster county has increased very rapidly for the past two years and now it requires at least two weeks for the trial of cases here. The legislature provided that we could have only one week of court and it is on account of this mismanagement or illmanagement by the legislature of the terms of court, that have deprived these counties of the necessary times of court, but sir, had the terms of court been arranged as I could have arranged them or any judge of the court would have done, I think the business might have been properly and well transacted. I have made these remarks for the purpose of calling the attention of the committee to some difficulties which have arisen in the second district, and perhaps the same has occurred n other districts.

Mr. ROBINSON. Mr. Chairman. I am glad to hear from the gentleman the fact that some counties have not had sufficient time for holding of their courts. Now, sir, I would like to hear what county has had sufficient time allotted to it. There is not sufficient time. I do not think the gentleman from Douglas (Mr. Lake) acting as judge of the district court of the second judicial district has ever been idle. It seems to me he has had too much to do. I merely wish to state a fact not for flattery as to my signing papers I wish to make a little explanation. I am charged with signing a paper asking that the term of court be adjourned. A couple of attorneys had got into a bad predicament and brought me a paper to sign. I refused, they came around several times with it and finally I signed it but wrote under my name that I was opposed to the petition, they scratched out the note and sent it with my name without any remark.

Mr. LAKE. I only said the gentleman's name was there.

Mr. MASON. Mr. Chairman. I desire to add one single word. Gentlemen of the committee will find this to be the fact that agricultural districts furnish but very little business, very little litigation. For instance, the county represented by my friend Mr. Hinman (Lincoln) with a population of 5,000 or 6,000 inhabitants, rich in agricultural resources, had only thirty cases in a year, there is very little litigation and no crime at all to speak of. Get into Douglas, Otoe, or Lancaster counties where commerce is transacted, there you find litigation, and I make this remark to show that these agricultuarl districts where you have no railroads, where there are no commercial cities, it will be found uniformly that the business is very small indeed. It speaks well for this class of counties. There is no necessity for this fifth district, if there was the slightest need for it I should certainly favor it, but I do not believe there is. It seems to me that the desire for the fifth district comes more from the plan in respect to the present apportionment of the state or districting the state, than the necessity of a fifth judge. I may say gentlemen, that I suggested the present mode of districting. It strikes my mind favorably as railroads run through every district. I am not particular about the manner in which it is districted, but to use a very homely phrase, I do not desire at this present time to load down this instrument so that it may die a premature death, fall stillborn.

Mr. WOOLWORTH. Mr. Chairman. I have listened to this discussion with a great deal of interest but there are two or three matters upon which I desire to be informed. I think there is a great deal of truth in what has been said by the gentleman from Lincoln in the discussion, I mean remarks he made pertaining to this question. There is a good deal in what he says about the necessity of having a district judge and court in these counties. In Douglas county for instance, at least one-third of the cases upon the docket will go out of the district court into the county court, and a great many criminal cases will take the same course, and this will take place in every other county, especially the larger counties. It sems to me the apportionment made by the committee is not altogether a wise one.

Mr. LAKE. I would like to say for the information of my colleague, this division of the state into districts was for the purpose of making a report. It was not altogether certain what would be the action of the convention in respect to the number of districts.

Mr. WOOLWORTH. I would like to ask Mr. Lake one question. Whether he is not of the opinion that Douglas county with the counties on the line of the Union Pacific railroad, numbering six or seven, could not be made a district, and the judge of that district be able to do the business of that line of counties, leaving of course Saunders and Butler counties to the district below the Platte river.

Mr. LAKE. I would have no objection to that mode of dividing the state and of that form of district. I think that perhaps a very large amount of business over that of any other district.

Mr. WOOLWORTH. It is a country so large, such a great extent for a judge to travel over that it takes a great deal of time and hard work. If part of the district were taken off and added to the district of Douglas and Sarpy counties the difficulty might be obviated. I desire to say to this convention, that there is no difficulty so great as adjournment of courts, the hastening of business at terms and cutting terms short before the business is concluded. With what has been said by the gentleman from Lincoln, and the feelings of gentlemen from other counties I quite sympathise. Just now it so happens that a great many of my cases are in the United States circuit courts, where the circuit judge is obliged to cut short his term, and I have felt recently very seriously the inconveniences that have been adverted to. They are serious matters that the committee and the convention ought to look at with a disposition as far as possible to avoid them

My object has been so far as I am personally concerned, to try and reach a conclusion satisfactory to myself. I cannot hope to satisfy anybody else. I submit to the gentlemen from the western counties, whether county courts being provided with a large jurisdiction, so that a good part of their own business will be provided for, and so that the time for district judges will be relieved a good deal, whether they cannot get along with four judges. My mind is not altogether clear yet, although it seems to me this might be done.

Mr. ABBOTT. Is it not a want of confidence in county courts which has prevented their general adoption with larger jurisdiction? And was this court not adopted to obviate the necessity of making five districts?

Mr. WOOLWORTH. Well, sir, the gentleman asks a question. I answer. In New York the county court has a jurisdiction to the extent of $4,000. In Iowa they have lately established another court, they call a circuit court, one considered not quite up to the rank of a county court. It has no equitable jurisdiction at all. The district judge generally holds his court in two counties instead of one. I do not believe there is such a provision in those states, and other states.

But I wish to say right here that the proposition has been discussed by some gentlemen of appointing county, [Sic] having them elected in two or three counties united together. I think the difficulties suggested by the gentleman from Hall would be obviated if that course were pursued. Say three counties—Hall, and perhaps Lincoln and Dawson counties—associated together, and have a county judge. I really think that county court would be a court presided over by about as competent and fair a man as you could get in the district court.

Mr. ABBOTT. That was my own suggestion; and I suggested this as a means of obviating the difficulty. It is only $3,000 per year.

Mr. WAKELEY. Mr. Chairman. I dislike to delay the committee, but I will only do so for a few moments. The question now is, I believe, on passing these sections for the purpose of referring them to the judiciary committee.

The CHAIRMAN. To defer the consideration of dividing the districts.

Mr. WAKELEY. Very well, sir. Mr. Chairman. Upon the division which took place in the committee, I voted in favor of the motion to strike out four and insert five. In doing so I did not at all intend to commit myself to vote for five judicial districts. But it seemed to me, at the time, to give those who favored the five, an opportunity to propose their divisions.

I give great consideration to the views which have been presented by the gentleman from Lincoln, and others who have advocated the necessity of five judicial districts. In looking over the territory comprising the present third judicial district; we find it to be a country of great extent. It is now some 300 miles up and down the Platte river, and 140 or 150 miles by the traveled road up and down the Missouri river, and even by attaching Hall, Buffalo, Dawson and Lincoln to a Cass and Otoe district, as proposed by the judiciary committee, you still leave, as constituting one district, a county almost 200 miles east and west, in an air line fully 200 miles; fully 200 miles by the traveled route, over 100 miles north and south in an air line, and more than that by the traveled route. So that that single district, as proposed to be constituted by the report of the judiciary committee, leaves an area of more than 20,000 square miles; larger than many of the old populated states of the union.

Now, sir, I see clearly that is only a question of time when that district must be divided. The only question, in my mind, has been this; and I have so stated it to gentlemen in private conversation, that I think it ought to be divided. But, at the same time I think it important to keep in view the consideration pressed with so much force from the other side, that we ought not to load down this constitution, when submitted to the people, a large array of offices with salaries. And I do not know but that consideration alone will decide me to vote for the four districts. But I thought it was right that gentlemen from this large district should be heard, and allowed to propose their division. I do not see any necessity of considering this matter. I wish the gentlemen who proposed to divide the state into five districts would do it now, and then vote on the question. With reference to the division of the state into districts, I think many gentlemen who have voted for the five districts have different methods of division in their minds. I think some favor a division by a north and south line, others by an east and west. I want to know what it is, and when presented I will arrive at the best conclusion I can as to whether we make that particular division or adhere to four districts. Now, supposing the division into four districts is to be retained, I think, with my colleague, Mr. Woolworth, that the division reported by the committee on judiciary is not the best that could be made. I think it would be more equal division of business, of judicial labor and territory, if a district was constituted running from Douglas and Sarpy, running up the Platte river, taking in several counties; or running up the Missouri river as far as Dakota county. But I have reason to believe that this would not be accepted by gentlemen wishing a division in other counties. Of course I have no disposition to force our own county upon any other county. But I think that would be more equal than the one proposed by the committee. So far as my practice in the county of Douglas is concerned it is a matter of indifference with me, or whether I should have to practice in other counties, as to whether those counties are in the same district or not. Hence I would be in favor of hearing what gentlemen have to say. I am opposed to hurrying this. I think gentlemen who are in favor of five districts may as well submit their ideas now as ever.

Mr. STRICKLAND. I think this proposition to defer ought to carry, for this reason. The committee have taken a long time to arrange these counties into four districts; and they could rearrange them much better and in less time. Let these four obtain and then make a fifth. I am in favor of the motion to re-commit.

The CHAIRMAN. There is a motion to defer the consideration of the formation of judicial districts.

Mr. STRICKLAND. I would make an amendment to the amendment that when we arise we report progress and ask the convention to—

Mr. LAKE. If any benefit can be derived from that course of procedure I have no objection. But it seems to me the committee is bound by its vote on the question, having decided to have five districts, and unless some change is made in convention, after the rising of the committee—

Mr. KIRKPATRICK. Mr. Chairman. This discussion has taken a very wide range. The committee of the whole has voted to sustain the amendment of five districts.

The CHAIRMAN. The question is upon referring the consideration of this question of re-districting to the committee with the amendments offered.

The motion was agreed to.

Mr. PHILPOTT. Mr. Chairman, intending to make a motion, I precede it with a few remarks. I am one of those who believe there should be a judicial district in the western part of the state. I don't yet understand whether we mean to divide the state into four districts so that the western part of the state can be accomodated. I now move to reconsider the vote making the change from 4 districts to 5. I voted in the affirmative. I think it is now the sense of the committee that we have four districts instead of five.

Mr. SPRAGUE. Mr. Chairman. It has been decided here that a motion to reconsider in committee is out of order.

Mr. ROBINSON. Mr. Chairman. I move that the committee rise, report progress and ask leave to sit again.

The committee divided and the motion was not agreed to.

The Chairman read the next section, as follows:

Sec. 11. Provision may be made by law for the increase of the number of judicial districts whenever two-thirds of the members of each house of the legislature shall concur therein. Such districts shall be formed of compact territory, bounded by county lines; and such increase shall not vacate the office of any judge.

Mr. THOMAS. Mr. Chairman. I desire to offer a section which may come in between the two sections last read.

"Judges of the district court may hold court for each other, and shall do so when required by law."

The section was adopted.

Mr. WAKELEY. Mr. Chairman. I desire to have added to section 11, after the word "increase" in the third line, the words "or any change in the boundaries of the district."

Amendment agreed to by common consent.

The Chairman read the next section, as follows:

Sec. 12. The judges of the supreme courts shall each receive a salary of three thousand dollars per annum payable quarterly until otherwise provided by law and after said salaries shall be fixed by law they shall not be diminished during the term for which said judge shall be respectively elected.

Mr. BOYD. Mr. Chairman. I desire to amend by inserting after the word "supreme" in the first line, the words "court shall each receive a salary of $4,000," and after the word "and" in the same line, the words, "the judges of the."

Mr. LAKE. Mr. Chairman. I hope the amendment of my colleague will not prevail. I am perfectly satisfied that the judges of the supreme court ought not receive a larger salary than the judges of the district courts. I know that in may states they do but in this state the duties devolved upon the judges of the supreme court, will be far less than the duties devolved upon the judges of the district court. Indeed, if a distinction were made, substantial justice would require, in my own opinion that the district judges should receive the most pay. The amount of business in the supreme court for a number of years will be comparatively small. The judges cannot be occupied more than half of their time not to exceed that; while the judges of the district court three of them, would be employed much more than one-half of their time. I can see no justice in giving to the judges of the supreme court any larger pay than we provide for the judges of the district courts. The latter will have to travel about over the state and be put to expense in a thousand ways that the supreme judges are not. I am opposed to the first part of the amendment, that proposes to increase the salaries to four thousand dollars. I do not believe in increasing any salary to three thousand dollars. I believe that the salary of the governor in the committee of the whole was placed at four thousand but I am not in favor of continuing that wrong to other officers, a wrong to the people of this state. The condition of our state is such that the people cannot afford to pay salaries higher than what we find in other states. The government which we propose to create by this constitution will be burdensome enough if we keep the salaries within reasonable bounds. Why the necessity of increasing the salaries from what has been paid heretofore up to four thousand? doubling them. I have heard it said it is to make the officers honest. By holding out a money temptation that would satisfy the greed of dishonest men and make them what they would not otherwise be. Now, it may be that this thing can be done, but I never have heard of a man's being made honest in that way. It may be that the plan would be feasible, but I do not believe that the state would gain any benefit whatever by paying exhorbitant salaries. I shall vote against the amendment. It will be borne in mind that we are creating several new officers, at least a much larger number than we had under the old constitution, and the expense of the state will be trebled and quadrupled. If we go on in the creating of offices and the increasing of salaries I can predict what the result will be I believe. I do not believe the tax payers of this state will submit to the imposition. You may have a constitution on paper, but when you go before the people and ask them to adopt it, it will meet with an emphatic no. And I, sir, as one of the tax payers of the state enter my protest against this extravagant form of government.

You will find, Mr. Chairman, that with three thousand dollars salary you will have the same candidates for office, and the offices filled by the same persons as if the salaries were otherwise. I am not in favor of placing the salaries so low as to exclude any one from office who is fit for it, nor in favor of placing it so high that it will induce persons to leave their business to aspire to it on account of the pay. It should not be such as to induce men to scramble after the salary of the office. Suppose Mr. Chairman that the salary of the governor was raised to $6,000 or $7,000 and that of the judges the same; there are men within this state who make more than that in their vocation, so that if you fix upon any sum that you may it would not pay all persons who might be called upon to fill such offices, and if you should fix it below that I do not believe it would exclude any one of those persons from any office within the gift of the state. Let us fix the salaries so that they will be reasonable, so that it will enable the person holding the office to support himself, not in extravagance, but reasonably well, and with such salaries you will command the best men of the state. Who ever heard of any one refusing to be a candidate within the last four years because the salary was too small? Did you hear of any person refusing to become a candidate to this convention because three dollars a day was not enough to pay them for being absent from their families and business? I have heard gentlemen say that if we had had sufficient salaries for certain officers we would have saved thousands of dollars. Can it be said that the plundering referred to has been done for support? If what is said is true they ought to have been satisfied with much less, for in no case could we have made the salaries equal the amount that has been stolen. If we elect an honest man he will not be rendered dishonest merely for the reason that the salary of the office is insufficient to support him. Not at all. If he knows before he enters upon the duties of the office, and he must know it, that he cannot afford to hold the office in consequence of the small pay offered him, he will refuse to become a candidate, and as I before said, such a case will not occur if we judge from the past, because it has not occurred. If a man is dishonest he will not be satisfied with $4,000 a year, if he was inclined to steal he will do it though you make his salary $10,000 a year for the greed of a thief is never satisfied. If the gentlemen will take the pains to figure up and ascertain what the aggregate amount of salaries will be under this constitution as it has been reported by the several committees who have been charged with the different articles, they will see that there is danger o foisting upon the people such a load that they will groan under it for years to come, that it will be next to impossible to carry. I am one of those who believe that we ought as members of the convention, to consider, occasionally at least, the taxpayers of the state. We seem thus far Mr. Chairman, to look only to the wants and emoluments that would accrue to the office holders without considering for one moment where the pay is to come from. Why, sir, it is well know that $1,000 at the present time is worth more than $1,500 or $2,000 was three or four years ago, and now it is proposed to raise the salaries of judges from $2,000 to $3,000, that is an increase of one-third, so that while the actual intrinsic value of money is increasing my colleague proposes to increase the salaries at least one-third, I should say the committee proposes to increase the nominal value of the salaries at least one-third, while my colleague proposes simply to double them up. I am opposed to this increase of salaries.

Mr. MANDERSON. Mr. Chairman. The argument of the gentleman from Douglas (Mr. Lake) is so convincing to my mind that I wish to amend the motion of the gentleman from Douglas (Mr. Boyd) by striking out ',$4,000" and inserting "$5 000" the salary of the supreme judge, and by striking out "$3,000" and inserting "$4,000," the salary of district judges.

Mr. MAXWELL. Mr. Chairman. I think the great danger of this constitution we are proposing to form is the high salaries proposed to be paid to the different officers. If I was in favor of any amendment it would be to strike out $3,000 and insert $2,500. While the people of this state are groaning under the taxes they are paying, while men who own property are almost unable to pay their taxes, it is sought to saddle the people of the state with taxes greater than we are paying now. If we do so, this constitution will in my opinion, be repudiated by the people, as much as we need a constitution. While establishing high salaries we must remember that salaries never decrease. I believe if we commence at $2,500 we can get just as good judges as now. I think we can get the very same men. The argument of the gentleman is that men cannot afford to take such positions at such prices. How is it with members of this convention? There are many of them whose time is worth more than ten dollars per day, but they come here for three, and some of them have had quite a little strife to get here. How is that? Not because it will pay them, but because they have a sufficient amount of pride to say if they are elected to positions they will accept of them and discharge the duties. So with the legislatures, I think you will find it so in any office created. I would commence with the governor and reduce the salary to a fair living price. I am in favor of $2500.

Mr. BOYD. Mr. Chairman. My reason for offering this amendment is, I think we ought to have the very best men in the state to fill these offices, and I do not think $4,000 any too much. Reasoning the same way as my colleague (Mr. Lake) that you can get just as good men for $2,500 as for $4,000, you need not pay them any salary at all. I do not think there is a man in this state capable of filling the position but would make more than that amount. I propose to vote for $4,000.

Mr. WAKELEY. Mr. Chairman. I desire to make a few remarks upon this subject. I will not, at this time, discuss the question what shall be the relative compensations of judges of the supreme court and judges of the district court. I address myself simply to the amendment offered by my colleague (Mr. Boyd) to increase the salaries of judges of the supreme court from $3,000 to $4,000. It happens, Mr. Chairman, that I belong to the profession from which the judges of the supreme court and judges of the district courts in this state must be taken; and it may possibly be thought that my views as to what is a proper compensation may be influenced somewhat by the fact of my being a lawyer, and having been connected with courts for a considerable time. However that may be, I do not propose that any consideration shall prevent me from expressing to this committee what I really believe; or from giving my vote for what I believe to be a just and fair judicial salary. There are certain rules and criteria which must be kept in view in deciding what is a proper and just compensation. My colleague (Mr. Lake) now one of the associate justices of the supreme court, has based his argument upon the assumption that no matter what the salary may be, we shall get competent men to fill these offices that we shall have the same men seeking election to these places, as we will have if the salary is increased. If that were true, it would be no test of what is an adequate salary for judges of these courts. It must be borne in mind Mr. Chairman that judges are taken from a class of men who must have certain, special training and experience to qualify them for the place. That is not the case with the executive and administrative offices of the state. Judges must necessarily be lawyers. The article before us requires that a judge of the supreme court shall be at least thirty years of age. It contemplates, of course, that judges of the supreme court and district courts will be taken from the class of experienced lawyers.

Now, sir, to acquire that experience, and become able and capable to fill the high office of judge of the supreme court or circuit court, I need not argue that a lawyer must have had much experience and long training and study. You cannot determine what is a fair compensation for a lawyer or a judge by precisely the same standard as that by which you would measure the compensation to be paid to an intelligent or experienced business man for a mere business employment. In the first place, it takes long years of study to prepare a student of the law to enter his profession. Then it takes many and weary years for a lawyer to acquire the necessary experience and knowledge to fit him either for the higher walks of his profession or for a judicial place. You must keep all this in view when you propose to fix a just compensation to be awarded to a judge of a high court.

Then, again, from the very nature of the office, it is required of him who enters upon it, of him who takes the sacred place of a judge upon the bench, that he discard all other pursuits and abandon all other employments; he must give his whole time and attention to his duties, and, by the responsibility and dignity and decency that belongs to his station he is excluded from all the avenues of gain and profit which are open to other men in the employment of the state or out of it. Then, sir, the lawyer we should call to a place upon the bench must break up the business he may have been years in securing. It changes all his pursuits in life, and dedicates him to one great and sacred purpose of administering the laws in justice and uprightness, keeping himself above all fear, favor, or suspicion. We must take all this into account.

Then, sir, when we take a man from the profession of the law, and place him upon the bench; break up his business, exclude him from all other employment giving him only a salary which will not support him in independence and respectability; and, at the termination of his service throw him back upon some other resources, are we doing him justice? Are we doing right? Is it fair and honest to measure his compensation by solving the question whether a proposed amount will, or will not induce some man to take the office? Sir, I would not inquire solely whether we will or will not be able to get a good and capable man to accept a judgeship for a certain sum of money. But, when I propose to pay the man who shall take it a fair salary, I put the proposition upon the broad and equitable ground that he will earn the money and ought to have it. The state has the benefit of his learning, of his experience, and of his ability, if he is capable of filling the office with credit the state should be willing to pay him decently and amply for it all.

Sir, it is no answer to the argument in favor of an adequate salary that you can get a man to fill the office for a small one. There are men who have pursued the practice of law who, thanks to their energy or to their good fortune, have accumulated a competence or an independence, and are above the necessity of a professional income and to whom the amount of a judicial salary would be of little consequence. Is it right or just that we should give such men, so circumstanced, an unfair advantage over their less fortunate brethren at the bar by fixing a small salary which forbids the one class, but not the other, from seeking promotion in their common profession? Suppose we were satisfied that the dignity of the office is such that men could be persuaded to fill it without pay. There may be found men in this state who are beyond the need of a private income, or of a salary, they may be willing to fill the judicial office without regard to its emoluments. Does that prove that there should be no salary, or a nominal salary attached to it?

In England, members of parliament have always served without compensation. What has been the consequences? Seats in parliament have been filled by men who have had fortunes to live upon and money to lavish for the corruption of voters. Shall we follow that precedent in the case of our judges? It is true that in this country, men have filled high judicial positions, men who have done honor to their positions and to their age, who have received but low and contemptible salaries, which it was a disgrace to the state to offer them, and possibly, the state of Nebraska may be situated so as to obtain men able to fill such positions creditably without regard to salary. But, come back to the basis of just compensation, and say what men fit and capable of filling these offices with credit to themselves and justice to the country who will come up to the full measure of ability and responsibility demanded of the place —say what such men will honestly earn and pay them by that standard.

I know, sir, that strong appeals are made to us not to establish an expensive state government. I recognize the force of that appeal. I propose, upon this floor, to keep that idea steadily in view. I will not vote to create one unnecessary office. I would not attach to any office a salary which, in my judgment, is one dollar too much. And, having so acted I propose to trust to the good sense, and the good judgment of the people of this state to endorse what we shall have done. I am not afraid of the people. And, let me tell you in regard to this particular office one thing. What was it that created in the minds of the people a sense of the necessity of this convention? If there was one single thing more than an other which in the minds of the people demanded the assembling of this convention, it was the necessity of a separate supreme court. From one end of the state to the other; not alone among the profession, but among all the people, there was one universal voice that this state had outgrown her judicial system. And everywhere, whenever I heard this subject mentioned, I heard this expression—"Give us a separate supreme court, and provide a salary that will bring to that office the best men i nthe state." And I have not heard one man, lawyer or layman, express a different sentiment, and I am not afraid to go before the people of this state and ask "Are you willing to give a man who is to sit in the judgment seat, on whose experience, ability and integrity not only your property and your character depends, but possibly your liberty or your life?" I tell you there will be a response from the people that you have done well and justly in providing a liberal salary.

Mr. Chairman, I do not care to trouble the committee with any further argument upon this subject. I have expressed my sentiments and with that I am content. I feel no special interest in the decision merely because I am a member of the legal profession, and still I know not but it may be possible that, from my long connection with courts I have imbibed a higher idea of what is due to the position, and to the service of an able, upright and pure judge, than I would have if I had been engaged in other employments which did not bring me much in contact with courts and judges. I have, sir, an abiding reverence for an honest, faithful, upright judiciary. I have seen in other states and in this the most vital public interests depended upon the unswerving integrity, the independence, and the unsullied purity of the judges of the land. Over and again they have stood as a solid bulwark against the temporary behest of the people. They have stood up strong and resolutely against the aggressions of power, as well as against popular passion and prejudices. And, over and again they have been the only refuge of the citizen from the usurpations of authority. Almost without exception they have been independent and pure. And, just as far as it is possible to do it, or aid in doing it, by legislation, they should be lifted above all temptation to swerve from duty, and above all pecuniary dependence.

It has happened to me as a lawyer to appear often, and through many years, before competent and upright judges. For them and for their position I have a great and habitual respect. And whenever as a citizen, I have expressed an opinion, or as a legislator, have voted upon the question of judicial salaries, I have uniformly supported the policy and the justice of paying judges liberally for their time and their services.

The CHAIRMAN. The question is upon the amendment offered by the gentleman from Douglas (Mr. Manderson).

Committee Rise.

Mr. MANDERSON. Mr. Chairman. I move the committee rise, report progress and ask leave to sit again.

The motion was agreed to.

Mr. McCANN. Mr. President. The committee of the whole have had under consideration the report of the judiciary committee and have directed me to report progress and ask leave to sit again.

Adjournment.

Mr. LEY. Mr. President. I move we adjourn until this evening at 8 o'clock.

Mr. WOOLWORTH. Mr. President. It may be worth while, in view of the storm which is rising to consider whether the question to be discussed this evening is of sufficient importance for us to come together again this evening. I am willing if the members will only come together.

Leave of Absence.

Mr. SPRAGUE. Mr. President. I ask leave of absence until tomorrow night.

Leave granted.

Adjournment—Again.

Mr. THOMAS. Mr. President. It will be almost impossible to get a full attendance this evening and I move to adjourn until tomorrow morning at 9 o'clock.

The motion was agreed to, so the convention (at six o'clock and twenty-five minutes) adjourned.

TWENTY-EIGHTH DAY.

Thursday, July 27, 1871.

The convention met at nine o'clock and was called to order by the president.

Prayer.

Prayer was offered by the chaplain as follows:

O, Thou who art the way, the truth, and the Life, Bestow upon us Thy peace. Leave us not alone in this world of danger. Enable us to do Thy will on every field where Truth does battle for God and man. Forgive us our offences, and keep us unto life everlasting. Amen.

Reading of the Journal.

The journal of the last day was read and approved.

Reports of Committees.

Mr. MYERS. Mr. President, I ask to make a report from the legislative committee—a bill which they have fixed, and I ask that 150 copies be printed.

The following is a copy of the report:

Sec. 1. The legislative authority shall be vested in a Senate and House of representatives.

Sec. 2. The enacting clause of all bills shall be: "Be it enacted by the Legislature of the State of Nebraska," and no law shall be enacted except by bill. No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the legislature, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and the nays entered upon the journal. No bill shall embrace more than one subject, and that shall be expressed clearly in the title.

Sec. 3. The legislature shall provide by law for an enumeration of the inhabitants of the state in the year one thousand eight hundred and seventy-five, and at the end of every ten years thereafter; and at their first annual session after such enumeration, and also after each enumeration made by the authority of the United States, the legislature shall apportion to the number of inhabitants, excluding Indians not taxed, and soldiers and officers of the United States army and navy.

Sec 4. The first house of representatives under this constitution shall consist of seventy-five members, who shall be chosen for one year. The first senate shall consist of twenty-five members, who shall be chosen for two years. After the first election, the number of senators and members of the house of representatives shall be regulated by law, but shall never exceed one hundred representatives and thirty-three senators.

Cec. 5. The members of the legislature shall receive for their services, at the first session after the adoption of this constitution, a sum not exceeding four dollars per day from the commencement of the session, but such sum shall not exceed in the aggregate two hundred and forty dollars for per diem allowance, except in proceedings for impeachment. They shall also receive one dollar for every ten miles they shall travel in going to and returning from the state capitol on the most usual route. The speaker of the house of representatives shall, in virtue of his office receive an additional compensation equal to one-third of his per diem allowance.

Sec. 6. The legislature shall meet in the capitol on the first Tuesday of January in every year, unless sooner convened by the governor.

Sec. 7. Each house shall choose its own officers not otherwise provided for by this constitution. Each house shall judge of the qualifications of its members. Contested elections shall be determined by a committee, to be selected, formed and regulated in such manner as shall be directed by law. A majority of each house shall constitute a quorum to do business, but a less number may adjourn from day to day, and may be authorized by law to compel the attendance of absent members in such manner and under such penalties as may be provided.

Sec. 8. No person shall be a senator who shall not have attained the age of twenty-five years, and have been an inhabitant of the state three years next before his election, and the last year thereof an inhabitant of the district for which he shall be chosen, unless he shall have been absent on the public business of the United States or of the state; and no person elected as aforesaid shall hold office after he shall have removed from such district.

Sec. 9. No person being a member of congress, or holding any judicial or military office under the United States, shall hold a seat in the legislature.

And if any person shall, after his election as a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

Sec. 10. No person who shall be convicted of the embezzlement or defalcation of the public funds of this state shall ever be eligible to any office of honor, trust or profit under this state; nor shall any person convicted of felony exercise the right of suffrage or be eligible to office, unless he shall have been restored to civil rights.

Sec. 11. The legislature shall determine what persons shall constitute the militia of the state, and may provide for organizing and disciplining the same in such manner as shall be prescribed by law.

Sec. 12. The legislature may declare the cases in which any office shall be deemed vacant, and also the manner of filling the vacancy, where no provision is made for that purpose in this constitution.

Sec. 13. The legislature shall never grant any extra compensation to any public officer, agent, servant, or contractor, after the services shall have been rendered or the contract entered into; nor shall the compensation of any public officer be increased or diminished during his term of office.

Sec. 14. The house of representatives shall have the sole power of impeachment, but a majority of all members elected must concur therein.

All impeachments shall be tried by the senate, and, when sitting for that purpose, the senators shall be upon oath or affirmation to do justice according to law and evidence.

When the governor of the state is tried, the chief justice shall preside.

No person shall be convicted without the concurrence of two-thirds of the senators elected; but judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, profit or trust under this state; but the impeached shall nevertheless be liable to indictment and punishment according to law.

No officer shall exercise his office after he shall have been impeached until he shall have been acquitted.

Sec. 15. The governor, secretary of state, auditor, treasurer, judges of the supreme and district courts, and all other elective state officers, shall be liable to impeachment for any misdemeanor in office.

Sec. 16. Members of the legislature, and all other officers, elective and judicial, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation.

"I do solemnly swear (or affirm, as the case may be,) that I will support the constitution of the United States, and the constitution of the state of Nebraska, and that I will faithfully discharge the duties of the office of——with fidelity, and according to the best of my ability."

Sec. 17. Every bill which shall have passed both houses shall be presented to the governor. If he approve, he shall sign it; but if he shall not approve, he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objection at large upon their journal, and proceed to re-consider it. If, after such re-consideration, two-thirds of that house shall agree to pass the bill, it shall be sent, with the objections to the other house, by which likewise it shall be re-considered, and if approved by two-thirds of that house, it shall become a law; but in such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journals of each house respectively. If any bill shall not be returned by the governor within five days (Sunday excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the legislature, by adjournment, prevented its return, in which case it shall be a law unless sent back within three days after their next meeting.

Sec. 18. Every order, resolution or vote to which the concurrence of both houses may be necessary (except on a question of adjournment) shall be presented to the governor, and before it shall take effect be approved by him, or, being disapproved, shall be re-passed by two-thirds of both houses, according to the rules and limitations prescribed in case of a bill.

Sec. 19. Any bill may originate in either house of the legislature, except bills appropriating money, which shall originate only in the house of representatives; and all bills passed by one may be amended by the other.

Sec. 20. The legislature shall never sell or dispose of the salt springs, or saline lands connected therewith, belonging to this state, but may authorize the purchase of contiguous lands thereto by authority of law, as may be necessary for the convenience and interest of the state.

Sec. 21. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds expel a member but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free state.

Sec. 22. Each house shall keep a journal of its proceedings, and publish them, (except such parts as may require secrecy) and the yeas and nays of the members on any question shall, at the desire of any two of them, be entered on the journal.

All votes in either house shall be "viva voce."

The doors of each house, and committees of the whole, shall be open, unless when the business shall be such as ought to be kept secret.

Neither house shall, without the consent of the other, adjourn for more than three days.

Sec. 23. For any speech or debate in either house of the legislature the members shall not be questioned in any other place.

Sec. 24. The legislature shall provide by law that all stationery required for the use of the state, and all printing authorized and required by them, to be done for the use of the state, shall be let by contract to the lowest bidder; but the legislature may establish a maximum price.

No member of the legislature, or other state officer, shall be interested, either directly or indirectly, in any such contract.

Sec. 25. The mode of organizing the house of representatives at the commencement of each regular session, shall be prescribed by law.

Sec. 26. Each bill and concurrent resolution shall be read at large in three different days in each house, and the bill, and all amendments thereto, shall be printed before the vote is taken on the final passage.

The presiding officer of each house shall sign, in the presence of the house over which he presides, while the same is in session and capable of transacting business, all bills and concurrent resolutions passed by the legislature.

Sec. 27. The legislature shall have no power to release or relinquish, in whole or in part, the indebtedness, liability or obligation of any corporation or individual to this state, or to any municipal corporation therein.

Sec. 28. Any person holding office under or by virtue of laws of this state who, except in payment of his salary, fees or perquisites, receives, or consents to receive, directly or indirectly, any thing whatever of value, or of personal advantage, or the promise thereof, for performing or omitting to perform, any official act, or with the express or implied understanding that his official action or inaction is to be in some manner or degree influenced thereby, shall be deemed guilty of felony, and on conviction shall be punished as the legislature may provide.

Sec. 29. Any person or persons offering a bribe, if the same shall be accepted, shall not be liable to civil or criminal prosecution therefor.

But any person who offers or promises such a bribe, if the same shall be rejected by the officer to whom it is tendered, shall be deemed guilty of an attempt to bribe, which is hereby declared to be a felony, and on conviction shall be punished as provided by this article.

Sec. 30. Any person charged with receiving a bribe, or with offering or promising a bribe that is rejected, shall be permitted to testify in his own behalf in any civil or criminal prosecution therefor.

Sec. 31 Members of the legislature shall, in all cases except treason, felony or breach of the peace, be privileged from arrest, nor shall they be subject to any civil process during the session of the legislature, nor for fifteen days next before the commencement and after the termination of each session.

Sec. 32. The legislature shall not have power to enact laws annulling the contract of any marriage in any case where by law the courts of the state are or hereafter may be empowered to decree a divorce.

Sec. 33. When vacancies occur in either house, the president of the senate or speaker of the house in which the vacancy may occur, shall issue writs of election to fill such vacancies.

Sec. 34. All bills for raising revenue shall originate in the house of representatives, but the senate may propose amendments, as in other bills. No money shall be drawn from the treasury but in consequence of appropriations made by law.

Sec. 35. The legislature shall provide by law for the suppression of vice and immorality in this state, and shall never authorize any games of chance, lottery or gift enterprise, under any pretence of or for anp purpose whatever.

Sec. 36. The legislature shall make no appropriations of money out of the treasury in any private law.

Bills making appropriations for

the pay of members and officers of the legislature, and for the salaries of the officers of the government shall contain no provision on any other subject.

The salary of any officer shall not be increased for any term for which he may have been appointed or elected.

Sec. 37. No money shall be drawn from the treasury except in pursuance of an appropriation made by law, and on the presentation of a warrant issued by the auditor thereon; and no money shall be diverted from any appropriation made for any purpose, or taken from any fund whatever, either by joint or separate resolution. The auditor shall, within sixty days after the adjournment of each session of the legislature, prepare and publish a full statement of all money expended at such session, specifying the amount of each item, and to whom and for what paid.

Sec. 38 Each legislature shall provide for all the appropriations necessary for the ordinary and contingent expenses of the government until the expiration of the first fiscal quarter after adjournment of the next regular session, the aggregate amount of which shall not be increased without a vote of two-thirds of the members elected to each house, nor exceed the amount of revenue authorized by law to be raised in such time; and all appropriations, general and special, requiring money to be paid out of the state treasury from the funds belonging to the state, shall end with such fiscal quarter; Provided, That the state may, to meet casual deficits or failures in revenues, contract debts never to exceed in the aggregate $250,000; and monies thus borrowed shall be applied to the purpose for which they were obtained, or to pay the debt thus created, and to no other purpose; and no other debt except for the purpose of repelling invasion, suppressing insurrection or defending the state in war, (for payment of which the faith of the state shall be pledged) shall be contracted unless the law authorizing the same shall, at a general election, have been submitted to the people, and have received a majority of the votes cast for members of the legislature at such election. The legislature shall provide for the publication of said law for three months, at least, before the vote of the people shall be taken upon the same; and provision shall be made at the time for the payment of the interest annually as it shall accrue, by a tax levied for the purpose, or from other sources of revenue, which law providing for the payment of such interest by such tax shall be irrepealable until such debt is paid. And provided; further that the law levying the tax shall be submitted to the people with the law authorizing the debt to be contracted.

Sec. 39. The legislature shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or contract made, nor authorize the payment of any claim or part thereof, hereafter created against the state, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void. Provided, The legislature may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion.

Sec. 40. The state shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan or extend its credit to, or in aid of, any public or other corporation, association or individual.

MISCELLANEOUS.

Sec. 41. The legislature shall provide by law that the fuel, stationery and printing paper furnished for the use of the state, the copying, printing, binding and distributing the laws and journals, and all other printing ordered by the legislature, shall be let by contract to the lowest responsible bidder; but the legislature shall fix a maximum price; and no member thereof, or other officer of the state, shall be interested, directly or indirectly, in such contract. But all such contracts shall be subject to the approval of the governor, and if he disapproves of the same there shall be a re-letting of the contract in such manner as shall be prescribed by law.

Sec. 42. The state of Nebraska shall never be made defendant in any court of law or equity.

Sec. 43. No law shall be passed which shall operate to extend the term of any public officer after his election or appointment.

Sec. 44. It shall be the duty of the legislature to pass such laws as may be necessary for the protection of operative miners, by providing for ventilation when the same may be required, and the construction of escapements, shafts, or such other appliances as may secure safety in all coal mines, and to provide for the enforcement of said laws by such penalties and punishments as may be deemed proper.

Sec. 45. The legislature shall provide for establishing and opening roads and cartways connected with a public road for private and public use.

Sec. 46. The legislature may pass laws permitting the owners or occupants of lands to construct drains and ditches for agricultural and sanitary purposes across the lands of others.

Sec. 47. The legislature shall pass liberal homestead and exemption laws.

The report was referred to the committee of the whole.

Communications.

Mr. McCANN. Mr. President. I have a communication I wish to present. I beg leave to present the report of the treasurer of the state university, furnished in accordance with a resolution of this body, and I ask for the unanimous consent of the convention to have fifty or a hundred copies printed. It is nothing but a financial statement, is very short and the expense of printing will be small, and I wish it to go before every member of the convention, and it cannot do so in its present shape.

The following is the report:

OFFICE OF TREASURER STATE UNIVERSITY,

Lincoln, July 21st, 1871

To the Honorable, the Constitutional Convention of the State of Nebraska:

Gentlemen:—In accordance with a resolution adopted by your Honorable Body, July 20th, 1871, I have the honor herewith to submit a full and complete report of all moneys received and disbursed by me as Treasurer of Nebraska State University.

I have the honor to be, with great respect,
Your obedient servant,
JOHN L McCONNELL,
Treasurer State University.

RECEIPTS

May 8th, 1871, from H. A. Koenig, State Treasurer	$28,263 60	
July 4th, " " " " " "	10,937 17	
July 10th, " " " " " "	4,500 00	
Total Amount of Receipts		$43,700 77

DISBURSEMENTS

SALARIES OF OFFICERS

Paid A. R. Benton, Chancellor,	$600 00	
" H. T. Davis, Secretary,	300 00	
" J. L. McConnell, Treasurer,	150 00	
" Peter Kron, Janitor,	212 41	
" Fred Rheinhart, Guard,	48 42	
		$1,310 83

STATIONERY

For use	$73 90	
Fencing University Grounds	$541 15	

TRAVELING EXPENSES

Professor H. E. Hitchcock,	$50 00	
" O. C. Dake	20 00	
		$70 00

ON ACCOUNT OF BUILDINGS

Paid for Privies,	$103 28	
" on University Building	406 60	
" Expenses Examining University	50 00	
		$559 88

COAL

Coal for use	$641 69	
Advertising for State University	$75 00	
Printing " " "	54 60	
100 copies Nebraska Statesman	4 00	
Coal Oil	1 25	
A. M. Davis for Merchandise	9 48	

GENERAL EXPENSES

Wood, Coal Hod, Shovel and Chairs	$14 50	
Brush, Mop and Hoe	6 60	
Step Ladder and Brush	6 00	
		$27 10

MILEAGE FOR REGENTS

C. S. Chase—January 10th, 1871—For Mileage	$26 80	
February 8th, " "	26 80	
March 2nd, " "	26 80	
April 5th " "	26 80	
June 14th, " "	26 80	
June 23rd, " "	26 80	
		$160 80

R. W. Furnas—January 10th, 1871—For Mileage	$28 00	
February 8th " "	28 00	
March 2d, " "	28 00	
June 14th " "	28 00	
		$112 00
A. B. Fuller—February 8th, 1871—For Mileage	$10 40	
March 2d, " "	10 40	
June 14th, " "	10 40	
June 23d, " "	10 40	
		$41 60
Uriah Bruner—January 10th, 1871—For Mileage	$36 40	
February 8th, " "	36 40	
March 2d, " "	36 40	
April 5th, " "	36 40	
June 14th, " "	36 40	
		$182 00
W. G. Olinger—January 10th, 1871—For Mileage	$44 40	
February 8th, " "	44 40	
March 2d, " "	44 40	
June 14th, " "	44 40	
		$177 60
T. H. Longley—January 10th, 1871—For Mileage	$37 20	
February 8th, " "	37 20	
March 2d, " "	37 20	
April 5th " "	37 20	
June 14th, " "	37 20	
		$186 00
J. B. Maxfield—January 10th, 1871—For Mileage	$22 00	
February 8th, " "	22 00	
March 2d, " "	22 00	
April 5th, " "	22 00	
June 14th, " "	22 00	
		$110 00
D. J. McCann—June 14th, 1871—For Mileage		$22 00
David R. Dungan—January 10th, 1871—For Mileage	$28 00	
February 8th, " "	28 00	
March 2d, " "	28 00	
April 5th, " "	28 00	
June 14th, " "	28 00	
		$140 00
Total amount paid for Mileage		$1,132 00
Total Amount of Receipts		$43,700 77
" " Disbursements		4,500 78
		$39,199 99
February 10th, 1871, Transferred to General Fund		16,000 00
Cash Balance on hand		$23,199 99

Committee of the Whole.

Mr. BALLARD. Mr. President. I move that the convention now go into the committee of the whole for the further consideration of the judiciary article.

The motion was agreed to, so the convention went into the committee of the whole—Mr. McCann in the chair—for the further consideration of the judiciary article.

The CHAIRMAN. Gentlemen of the committee, section thirteen is under consideration. The question is upon the motion of the gentleman from Douglas (Mr. Boyd), who moves to insert after the word "court" shall each receive a salary of $4,000, and insert before the word "district" the words "judges of the". The question is upon the amendment.

Mr. GRAY. Mr. Chairman. I have a word which I desire to say upon the question of these salaries. I am opposed to the amendment offered by the gentleman from Douglas, (Mr. Boyd) simply for this reason. The amendment proposes to make a distinction between the judges of the supreme and district courts. The amendment proposes to give the judges of the supreme court a salary of $4,000 and the judges of the district courts but $3,000. I am not very strenuous—my mind is hardly made up as to what the salaries of the judges should be. It is proper for me to say, however, that I desire to see these officers paid well for their services. It is a question in my mind whether $4,000 is too much. While it is urged here that we may load down the constitution by making these salaries too large; whatever it may be decided upon, whether it shall be $3,000 or $4,000 or any other amount. I desire to see the amount fixed for all the judges the same. It seems to me that if you make a distinction, though it be but $5, that the distinction itself will have the tendency to make a wide distinction in the class of ability of the judges who preside upon the benches of these two courts. For my part I believe we need the best ability in the state for the district courts, as well as for the supreme court. I am satisfied that the expenses of the judges of the district courts will be greater than those of the judges of the supreme court; their time is more fully occupied—in short, their labor is greater, and their ability should be of the first. The judges of the district courts are called upon to pass upon all questions of a general nature which pass before them, generally with perhaps a moments notice, and they must be ready to act promptly upon these questions. While I desire to see our best talent upon the supreme bench, still it must be considered that they have much greater time for reflection and consideration than the judges of the district courts. I think it would be unwise to place upon the benches of the district court, lawyers less than the best in the state. It seems to me if you pay judges of the district court less than the judges of the supreme court, those lawyers who stand at the head of the profession in our state will be disposed to avoid the position of judge of the district courts. For my part I wish to avoid that result. I desire to see the best talent in the state upon the bench of the district court. So then I say, that, whatever the salary is, I desire to see it made uniform and the same sum paid the judges of the district court that is paid the judges of the supreme court. I shall oppose not only this amendment, but every amendment of that kind; but if the gentleman from Douglas (Mr. Boyd) will make his amendment read $4,000 to each of the judges, I am not sure that I will oppose it.

Mr. WOOLWORTH. Mr. Chairman. I desire to say a few words this morning in respect to this matter. The idea seems to obtain, with some of the members of the convention, at least, that we are establishing a government with a great many more officers and a great deal more expensive than the old state government. Now, I think there is a misapprehension upon that subject. Aside from the single office of Lieutenant Governor, to whom will be paid, I suppose, two or three hundred dollars a year, we have created no new offices. We have a governor, secretary of state, auditor, treasurer, attorney general, and superintendent of public instruction; add to these offices the single one of land commissioner, and you have already as many state officers as we propose to establish. I desire to call the attention of the members of the committee to that matter. Let us look farther. It may be said, "you propose to provide for larger salaries for these officers." Well, now let us see whether, under the government we propose to establish, even if we do, we are going to have a more expensive government than we already have. I don't know, precisely, what is paid to all the different state officers. If my recollection serves me right, the auditor gets $2,500 now—the same we propose to pay him under the new constitution; the other officers get somewhat less than you propose to pay them. But see what you save by the scheme of government you have provided. You give the three inspectors of the state's prison from six to seven thousand dollars per annum. That you propose to wipe out. We propose to wipe out all the expenses of the regents of the university and several other boards. Now, then, put the expenses you propose to cut off to the lowest figure, and it can't be much less than ten thousand dollars. That sum will make up all the extra expense arising from the increased salaries which are proposed. These declarations, that we are establishing a government so much beyond what we have had heretofore, and so expensive that the people will be unwilling to adopt it, are not well founded. I assume that these offices I have mentioned are to be cut off, from the remarks in private I have heard made by several members, as well as by the action which has been taken thus far in this committee. Now, there is another matter to be taken into consideration by this committee in connection with this matter of economy. I say that it is a true economy to secure the services of the very best judges, although you pay them twice what you pay common men. I will illustrate what I have to say by a single instance taken from my own personal experience. Allusion has been made to the litigations between Lincoln county and the Union Pacific railroad company. There have been two suits. The first suit brought was before Mr. Justice Crounse, who held that the railroad company was liable to taxation by the county and state. Now, sir, I beg to say that no man entertains a higher opinion of the fairness, learning and ability of Mr. Crounse than I do. I take this opportunity, in passing, to refer to the man who adorns the bench of this state. But I say that this gentleman did not by his correct judgment command the assent of the railroad company and their counsel; and they were not satisfied with it because the learning and character of the judge was not such as to impress the litigants with the feeling that he was certainly right. What was the result? The railroad company paid the tax then particulaly in question, to be sure, after a very considerable deduction made on the part of the county, by way of compromise in order to avoid the delay of an appeal. Then what did the railroad company do? It went into the Circuit court of the United States. It went there to get the opinion of Mr. Justice Dillon, or if possible, Mr. Justice Miller. It went there to get the opinion of one of the very first men who adorns the bench of this land. In the opinion of one or the other of those judges it was willing to abide, because in their great learning and ability it had supreme confidence. Now, sir, had the judge of the state court brought to the consideration of the first case like powers the whole second litigation would have been entirely saved.

The point which I wish to make is this, that it is a true economy to place upon the bench men of the very highest character, because then litigation and the great and manifold expenses attending them will many times be avoided. The public will not rest satisfied with even the most elaborate judgments of the supreme bench, unless that bench is filled with the very best men. A case may there be determined, but parties afterwards involved in a like controversy, considering the principle of the case still unsettled, will renew the controversy. On the other hand, let men worthy of the dignity be placed in the judgment seat, and their opinions, as one by one they are delivered, will be accepted as settled law—not to be questioned, not to be changed. Have a court filled by judges who enjoy the confidence of the profession and the public; who bring to the discharge of their high duty abundant learning and capacity and devotion to their duty, and a system of law will be built up, before which parties and counsel will bow in homage. Put it on the question of economy, and I say it is the greatest economy to fill this high position with men of the very best ability. My colleague, Mr. Lake, who fills the bench in the second judicial district tells you the same judges will occupy their offices, the same candidates will be presented to the electors for their suffrages for these positions as before. I think not, sir. I think the men who will be presented as candidates, if not those who will be elected, will be men of higher character and fitness if the salary is four thousand than if it is three thousand dollars.

I am willing sir, that our best men, the men among us who are most fitted to sit in the courts to adjudge the rights of their fellow men, will not accept the position for the sake of the salary. They today earn in the practice of their profession twice or more than twice the sum you may give, whether it be three thousand or five thousand dollars. Nor, sir, do I think they will seek the position simply for the honor. That is a matter of desire, certainly. I will not detract one iota from the dignity of the office; but men will not make sacrifices of half of their income in order to secure it. It is honor at too high a price. The man who for the salary or the honor of the place would seek or accept it is utterly unfit for it. The motive of his own heart is wrong, and the whole of his career will be in the wrong direction. But there is another and a higher reason why this exalted place should and will arouse the laudable ambition of the very best men. It is that it furnishes opportunity of usefulness to the state and people. He, sir, who shall sit on this bench at this stage of our history may mould and lay the foundation of the jurisprudence of this state for all time to come. He who shall bring to this work ability, learning, faithfulness and power adequate to this charge will do a great service to this people; will build a mounument to his own name that is to be desired beyond all the money you can give them, and beyond all the honors you can confer. It is to do what Chief Justice Caton has done for Illinois; what Chief Justice Blackford has done for Indiana; what Judge Hitchcock has done for Ohio; what Judge Kent has done for N. Y., and Judge Parker of Massachusetts. Why, sir, it is an opportunity offered to the right man that comes but once in a life time; an opportunity that comes but once in a generation. This is what makes the office honorable, and stimulates the ambition of good men to desire it and fill it. Such a man would serve his day and generation, and the most distinguished man in these United States is unfit to sit upon the bench if he is not actuated by this motive. A life devoted to objects of selfishness, in acquiring wealth, honor, however brilliant, will, when it is all spent, be worthless and a withered thing; but a life spent in doing good in the service of the state, of the people has a glory which illumes the memory of the man who lives it, and the people whom his services shall bless. But, sir, there is another view in which I desire to present this matter to the committee. I ask you, gentlemen, to go back with me in the judiciary history of this nation a few decades. When Chief Justice Marshall presided in the supreme court of the United States, a little case came before that court for consideration. It scarcely involved over one hundred dollars. The question was whether the old corporation known as Dartmouth College should be suppressed, and another called the Dartmouth university established in its place. The officers of the new institution demanded of the secretary of the old books of account and record—some five or six in number, and when refused, brought the suit to recover them. Thus was raised the question of the validity of the act of the legislature, which turned upon the provision of the Federal Constitution denying to the states power to pass laws *impairing the obligation of* contracts. Thus the great question was involved in that little case whether institutions of learning and institutions of religion should be preserved to do their beneficent work, or be subject to the caprice of irresponsible legislatures. It was argued by the great American, Webster. After he had gone through an argument of matchless power, he closed by saying: "I speak today, not for the single institution whose existence is here involved. It is a small institution. If its light shall be put out, still the clear day will bless the state. But I speak for the multitude of institutions scattered all over the land, by which the young are trained to be citizens, and the suffering of the unfortunate alleviated. I plead for the charities which benevolence have ordained, and the bounties by [which] the lights of learning and science are forever to be fed. I plead for the future in its illimitable issues, as well as these in which we live." The court adjourned. It took time to consider on its judgment, and then came in, and the great Marshall delivered that opinion, luminous with learning and reason which established safe forever all the blessings of the charities, the legacies, the bounties, which the benevolence of the good in all time shall found and endow.

It was a principle whose issues reach to the end of time, and compass all institutions of charity and religion. To declare, to entrench, to forever established this beneficent law was the office and the work of a great judge.

Do you think, sir, that pigmies can render this great service? Do you think that cheap men are fit to be put at this great work? If so, pay them but the small salary fixed by the section. Do you say such questions as were involved in the case I have referred to do not arise in our courts? Why, gentlemen, to-day there is in the Supreme court of the state of Nebraska a question involving issues just as far reaching, principles just as important as the case I have referred to. To the determination of that case must be brought the largest learning, the most exhaustive research, and the largest powers, it is no less than this, stated simply: Whether a negro can sit on the juries of this state. Stated in its larger relations, is whether its fundamental law can be dictated to a sovereign state by congress and by the legislature of the state, elected for a mere ephemeral purpose. Nay, another question, broader and greater than this: The relations to the Federal government of a territorial organization framing the fundamental law of the future state, and the relation of new states to the general government. It is a question before which any man who addresses himself to its determination ought to bow down in profound humility. It is a question not inferior in magnitude deserving no less of consideration, as any possible question that can be raised before the courts. Why this very question of wheather this sovereign state of Nebraska, as well as the several counties, can tax this Federal corporation, the Union Pacific railroad is 'another question of the utmost importance; a question upon which depends not the fifty thousand or seventy thousand dollars that may be involved in any particular litigation, but involving a repetition of that sum through all the years to come. I say this tribunal is the one which must determine these questions. Now, sir, how are you to secure men who are competent to dischrage these great functions? Sir, I am not of those who believe that the man lives today in this state who is altogether competent to discharge the duties. Sir, I am one of those who believe that any man has led the life that has fitted him to occupy this judgment seat in a manner worthy of himself and worthy of the place. Why, sir, the judge who shall sit in that court, who passes the vacations which he will have in idling about the streets, or in social conversations with the neighbors and friends will never become fit for it The man who has no library in which he lives will never be fit for it; the man who does not go into his library, an ample library that of itself shall cost all that you give one of these judges in a year, the man who will not have such a library and go into it, and there exhaust day by day and night after night the best efforts of his mind, all the powers of the nature with which God has endowed him, will be unfit to sit there. It is a man, sir, who shall deem his duties on the bench but a very small part of the duties of his office who will adorn that seat. It is the man who shall, vacation after vacation, month after month, week after week, day by day, night by night, store his mind with the learning of law, and enrich and strengthen the powers of his mind by the exercise of dilligent and laborious study. Such a man, sir, living such a life, will do for this state the service which we are entitled to exact at his hands. Why, sir, do these few thin volumes of statutes that have been compiled contain the body of the law? No, sir, they are the thousands of volumes that line the walls of your library below, and he will be a fit judge above who shall exhaust the learning that is there. Is the legislature the law making power of the state? Why, sir, no legislature is wise enough or good enough to embody the law in its enactments. They are contained in the great number of reports which make up the great body of the law.

These reports contain the opinion of the great succession of judges who through many generations and many centuries, have from the many cases before them evolved, illustrated, made plain the fundamental rules and great principles of jurisprudence.

He is not equal to the stature of a great judge who has not mastered it; nor will he ever attain that stature who does not labor to master it all. Now, sir, I say that you must pay these men enough to enable them to withdraw from the ordinary pursuits of life and give themselves up altogether to this great work. I apprehend, sir, that no man that is elected to that position will be so wanting in self-respect, and so wanting in respect for the good opinion of his neighbors and fellow citizens, as to withdraw himself from habits of idleness and mere social intercourse. I would have him also withdraw himself from all avenues for the accumulation of property. I would have him withdraw himself into the inner sanctuary of the learning of the law. That he can only do by being relieved, by a fair salary, not a liberal one, not an extravagant one, but a fair salary, from the necessity of eking out his living in the byways and hedges of private life. Not that he would be corrupt, God forbid that this people, whatever salary they shall pay, would elect into this high tribunal one man who should thus forfeit not only the respect of his fellow citizens and the respect of himself, but his hope of heaven, hereafter.

But, sir, while I have no fears of that, if this salary should be put down to a low figure, the pitiful sum of $3,000, that you will get men in this place who will either eke out their substance from private fortunes already accumulated, or else by modes that are not reputable, not fit for a good judge to pursue. Therefore, sir, I am in favor of the amendment of my colleague from Douglas, (Mr. Manderson) that the salaries of judges of the supreme court shall be put at the sum of $5,000 and if the salaries of judges of the district court are put at a lower sum, I am not certain at all that any injustice will be done. One word further before I sit down. This convention has had before it the report of the auditor of state showing the amount of money paid into the treasury on account of commencement fees. I do not know what that sum is, I know it is very large. I am willing to confess my utter surprise to see that a measure introduced into the present constitution of the state by which so large a sum has been realized to the state from this source, is left out. Here is a mode of raising the means of paying these salaries, and the judiciary committee come here and say the people are too poor to pay a decent salary to these judiciary officers. Think of it. If one go into the court and have the service of the judge is it not right that he should pay the expense? Ought he not to be compelled to do that. More than half the litigants in Douglas county are non-residents of this state, and the learned judge who presides in that district court has told you that in that county is done more than half the judicial business of this state. More than half are non-residents. I put it to you if it is not fair if people come here to have the benefit of our courts, that they should contribute the sum of five dollars as commencement fee? How is it possible to strike out the means of judicial revenue and then cry out that the people will not pay fair salaries to these judges? Restore the provision and you have revenue sufficient to pay all the salaries you want to give.

Mr. MYERS. Mr. Chairman. I do not rise for the purpose of discussing this question of salaries, but merely to state my own impressions as derived from the discussion as it has thus far progressed. I think the convention has devoted too much time to the subject already and if the whole session is to be consumed in discussing salaries it will be certainly a very expensive waste of time which the people all appreciate. I only wish to make this remark that if we load the ship too heavily, put too much freight on her and she may be a ship of heavy tonnage and able to carry much, but if you go beyond the measure of the ship you sink her to the bottom. It is true we are in favor of liberal and just salaries and we have different views as to the amount of those salaries; but if we make them beyond the reach of the people we certainly injure the sailing power of our vessel, and we may all go to the bottom. There is a greater power behind the throne than the throne itself. I mean the people, and they will not roll these salaries under their tongue as a sweet morsel; but they will look at them as burdens, and they will compare what it costs them for the necessities of life, and regulate them by that, and the comparison will not be favorable to heavy salaries. I do not wish to stint the judges of the judiciary to mean and unworthy salaries, and make them dependent upon private charity. That would be unfair to a great state but to give fair salaries is my object. The legislators are the custodians of that power which says that the salaries shall not be increased or diminished, and I believe we ought to leave it with the people. If the people elect a judge, in whose integrity and ability they have confidence, they will provide by legislative enactment what is right and proper. Therefore in order to save our ship I move that the salaries be regulated by law.

The CHAIRMAN. The amendment is not in order.

Mr. MYERS. Then I make it as a suggestion.

Mr. TOWLE. It seems to have been a point entirely overlooked in the discussion so far, that the power was already vested in the legislature, by section thirteen, to increase the salaries of the judges of the supreme court. It appears to me the amendments which have been made here should not prevail. The salary fixed by the judiciary committee is entirely adapted to the wants of the people of Nebraska. We should look to the financial condition of the state and see in what condition we are to pay these large salaries, just as the head of a family does when hard times come or, when resources are cut short, and there is danger of being stranded upon the sands of indebtedness. We ought to reduce expenses where, by possibility, it can be done. The gentleman from Douglas (Mr. Woolworth) spoke of Justice Field of California, Cooley of Michigan, and others. The yearly income of California is $135,000. [Sic] Looking at our appropriations last winter we find there were $200,000 one year, and $400,000 for the two years. We are running in debt, and getting behindhand; and I ask if it is proper, finding this state of affairs, to increase the salaries of these judges. Is it or is it not a question that those judges can live reasonably well and respectably upon a salary of $3,000 per year. I will venture to say that the salary of $8,000 paid to the judges of the supreme courts of the United States, living at Washington, is no more than $3,000 per year in Nebraska. That a man can live as comfortably and respectably in Nebraska as those judges do at Washington.

Mr. WOOLWORTH. Will the gentleman allow me a word. Is he aware that Chief Justice Curtis was compelled to resign his seat because his salary was insufficient? And I know myself that the justice assigned to this judicial district has used so much of a very large private fortune that he is in a very embarrassed state.

Mr. TOWLE. Mr. Chief Justice Curtis is, perhaps, the only individual who has resigned on that account and there were other and mixed motives which influenced that resignation, because it is known he could make at least two or three times the amount in his practice than he was making while in an official position. I do not want to repeat that kind of thing in this state.

I would have this constitution, when it goes before the people, stripped of all dead weight. I would have it stand in the arena as stood the athletes of old when competing for prizes. I believe there is a certain pride of the members of this convention to have this constitution go before the people in such a shape as that it will be adopted. The gentleman from Douglas spoke too, in contradictory terms, of Mr. Crounse. He based his opinion smooth as it was delivered, and rounded as were his sentences, and I believe all who know him can vouch for that. Yet he says, with all his learning, his integrity and his desire to do justice, he could not satisfy the demands of that corporation, when a suit goes against them in the lower court, they never stop, but take it up into the higher court. But that gentleman might have said, after passing that magnificent strain of eloquence on Judge Dilworth and Miller, that they still decided to take it up to a higher court. And that corporation, whenever they lost in a lower court, passed that thing on until the bitter end and demanded a decision. The gentleman made an argument which will not stand by itself. And those very gentleman, Miller and Crounse, could you have found another man in Nebraska that that giant corporation of which the gentleman has spoken would have been content with and they would not appeal from? Why sir, the individual could not be found. They would have risked the affairs of the corporation in any other hands.

Mr. MYERS. I would ask, as a matter of order, what railroads have to do with this body?

Mr. TOWLE. I am speaking to a question which the gentleman before me alluded to.

Mr. LAKE. I trust the gentleman may be allowed to proceed.

The CHAIRMAN. The gentleman is in order and can proceed.

Mr. TOWLE. It is barely possible, Mr. Chairman that were I sitting here as a legislator, and did I not have a particular desire that the people should adopt the constitution, it is barely possible that when our resources are increased, that was the business of the supreme court sufficient to keep men busy all the time that I might here, if our income would justify, and I do not believe our people would object to an increase from $4,000 to $5,000 per year. The argument was urged that we have increased the governor's salary to $4,000, and why not increase those of the judges to the same amount. I grant you that it may take a better man to make a good judge than it does for a governor. But they must not forget that we have required by our constitution that the governor must reside here at Lincoln, and must support his family upon his pay. I tell you that it will take one or two thousand dollars per annum for a judge to live here than if he resides in any other portion of the state.

Mr. Chairman. Believing that when there is a necessity for it the pay of our judges will be increased and believing that one thousand dollars more given to a man to make him honest, will not have that effect, because if he is dishonest, he he will be dishonest anyhow, I oppose the increasing of the salary as proposed, again; it is provided that the Judges of the supreme court shall be over thirty or forty years of age. Now if they have been men of moderate economy they have accumulated sufficient property that they can take these offices for perhaps something less than the amount they may see fit to expend each year. It is not for pay, altogether that men take these offices; it is for the influence, the position, the power they get. To some extent I think that a man ought to be willing to take these offices for the honor connected therewith as well as for the emoluments of the office. I deny that insufficient salaries ever made a poor bench or a dishonest bench; but it is a fact sir, that our judges are honest and upright men. It is not the salary which they receive that has developed such men as Cooley, Blackford, Dillon, and others of like reputation. It is a fact that their salaries were small, but sir, the God given intelligence they possessed was bound to shine forth and be of value to themselves and their fellows. The intelligence which God has given to men will make itself felt, and wherever you find these men, whether they receive large or small salaries you will find them pushing their way through. Now, sir, when we are placed in a different and better condition, when we are prepared to pay better salaries, then I am ready to pay more. I believe that our present judges will accept the offices they now hold. I believe that the people have asked them to become candidates for reelection, and that they are willing to keep their places. Mr. Chairman, for these reasons I am opposed to an increase of salary over that as reported by the committee.

Mr. ABBOTT. Mr. Chairman. I will ask the gentleman if he never heard that Chief Justice Taney spent his life upon the bench, and, when he died left his family in poverty?

Mr. TOWLE. Yes, certainly, I am acquainted with the case.

Mr. ABBOTT. I would like to tell the gentleman of a fact which came under my observation. I was riding, sometime ago, with Judge Crounse. When the conductor came around, the judge showed his pass, and said to me, "the fact is, I am ashamed of this, but my salary is so small as to leave me poorer every year and I am not able to pay my way, and have to accept passes from railroads." I told him then, that if I ever had the power I would do all I could to increase the pay of judges, and give them salaries somewhat better proportioned to their abilities and service rendered.

Mr. MASON. Mr. Chairman. I don't propose to let this question pass without stating my individual views. The question is one which interests all the people, because the protection of lives and property are connected with it. It is important that the law be clearly declared, and to the accomplishment of this result we must have judicial offices, filled by men of learning and ability. This class of men are not usually men who are distinguished for the acquisition of property. Indeed, sir, if we look over the world, we find the distinguished scholars, in every department poor men. A man sir, cannot bend every energy of his mind to the study of his books and yet engage in speculation; he cannot worship at e shrine of learning, and, at the same time be toiling for acquisition of wealth. Now, sir, what is the lesson we learn from this? And let us consider for a single moment what we do when we ask a man who is fit for the place. Why, sir, he abandons a profession—he abandons a practice which it has taken him years to build up, for sir, every lawyer upon this floor will tell you that his practice, and his knowledge of the law is his capital, this, sir, is scattered to the four winds—swept from existence. Usually it is a practice which will pay him not less than four or five thousand dollars per annum. Why sir, if I appeal to my learned friend, Judge Lake, he will tell you that he laid down a practice which was paying him four thousand dollars a year, and took the two thousand dollars which he receives as a district judge. But sir, it is not just to the state to shut out the learned man who may be poor, from holding this office, because he has no property to fall back upon to support himself. One other suggestion I desire to answer; I can speak for one, and I speak too as one, whom, so far as I know, is not famous for extravagance, neither at home nor abroad, and I say I am thirty-five hundred dollars poorer today than when I was sworn into office, notwithstanding I have drawn from other sources than my profession. Now this I hold to be the true rule with respect to the salary of the judges; you should pay him sufficient to let him live, and support his family, not in luxury, not in opulence, but still in a comfortable manner. We should have enough to live on and pay for a life insurance policy, so that if he is taken away, his family should not be left to the cold charities of the world. Let us take this for a standard, we pay $3,000 a year. If any gentleman rent a house and furnish it and fit it up for his family of three or four children, in this place—I am told that he cannot rent such a house for less than $800 or a $1,000 a year, and they tell me that they cannot support their families and educate them for less than fifteen hundred dollars a year, although he may not give a dinner party the whole year round, and then sir, he has but $500 left to pay his taxes, etc., and he will have nothing left to pay the premiums on a life policy. Still I would not favor paying $5,000, although I would favor $4,000. I am not so fortunate as to live here where I can have access to the state library and it will take $500 a year to keep up my library. One that spoke as man speaketh not has said "the laborer is worthy of his hire" and I think the judiciary officer is worthy of his hire. It does seem to me in looking over this matter that the necessary expenses are to be considered. It costs more to live in the state of Nebraska than any other state in the Union, with two or three exceptions. I undertake to say that my colleague (Mr. Lake) could not rent the house he lives in in Omaha and live on less than $3,000 a year. I would not make it five thousand for the reason that the gentleman from Douglas (M. Woolworth) has suggested that no such man is in the state now and we will have to take some man that is in the state, and hence I think it is well for the convention to fix between these two extremes $3,000 and $5,000. If it is thought by any gentleman that I desire to retain this office at $3,000 a year he is grandly mistaken. My first duty is to my household; my children remain at home to day uneducated merely because I am unable to send them away. If we put this salary at $4,000 I think we can then command as good talent as we have in the state. For these reasons I shall support the amendment offered by the gentleman from Douglas (Mr. Boyd.)

Mr. LAKE. Mr. Chairman. I beg the indulgence of the committee a few minutes. It seems to me that the whole question is begged by the gentleman who support these large salaries. They all admit the fact that I have stated that we shall have the same judges on the bench that we would have with a higher salary.

Mr. Chairman, I agree with my colleague (Mr. Woolworth) in the higher encomiums he pays to the eminent gentlemen of the bench, and sir, what was the salary that has brought forth his talent? What was the salary paid to Chief Justice Hitchcock of Ohio? For a long time he labored upon a salary of $1,800 and $3,000 a year is all that is paid today in Ohio. Ohio the third state in the union, with more causes to be determined in one year than will be found here in a term of six years. Look at her ability to pay and at our poverty as a state and tell me why we should pay more than that and the older state. When we cast our eyes over this prairie, what do we see, as a source from which to draw all these high salaries? The inhabitants all over this state have come here for the purpose of making homes. Many of them unable to pay for the lands they have purchased. They have come here for the purpose of bettering their condition. They are living in hovels, in dug-outs, in sod shanties and tents throughout the length and breadth of our state. It is from these sources that the revenues of the state are to be drawn, and we must not expect to step forth at first into the full grown stature of the first state of the Union. We must not expect to be able to pay the same salaries to our officials that are paid in the state of California, whose foundation rests upon solid gold. We must look to the interests of our constituents and ask what they are able to pay for a reasonable amount of intellect, a reasonable degree of talent, and I think Mr. Chairman, that if the best order of intelect, the best learning at the bar of our own state are brought to investigate the questions which are brought within our courts that the people of this state will be perfectly satisfied, and although in the eloquent language of my learned friend (Mr. Woolworth) their decisions may not be quoted in Westminster hall, although they may not shine with the lustre that the Blackstones or the Kents or the Storys, or the Shaws could bestow upon them, still the people of our state who are living in their dug-outs, shanties, and sod houses will be perfectly satisfied if the persons they elect to fill these offices bring to the decision of the cases which are submitted to them all the talent which they possess and do that honestly and well. Now for the purpose of showing what the talents which the gentleman has eulogized so well and highly were paid what the jurists of Ohio, Minnesota, Kansas and of other states were paid, I will read a list I have prepared of a few states. Missouri, one of the richest of our western states, pays to its supreme judiciary $3,000 per annum. Minnesota, a state far more wealthy than ours, a state older by a good many years, a state that has a far greater amount of litigation than Nebraska, what does it pay its supreme judge? $2,000 per annum. Michigan, a state whose decisions are quoted throughout the length and breadth of the land, that has a judiciary today, perhaps, second to none in the United States, and one whose decisions are quoted in the Supreme court of the United States. What does the state of Michigan pay its judiciary, a state that has that man so eminent for his learning—Justice Cooley—presiding upon her supreme bench, she pays $1,500 a year. Kansas, a state that was admitted into the union long before Nebr. thought of becoming a state, and a state which must have two or three times the amount of litigation found within our courts. What does she pay? To her chief justice, $1,800 a year, and associates $1,500. Iowa, what does she pay? We find upon the statute books of that state the salary of her supreme judge is $2,000 per annum. Ohio, I have before remarked that at the time she could boast of the eminent jurists she has ever had, those that sat together with the eminent chief justice named by my colleague, Hitchcock, that at that time when those decisions were pronounced that are today recurred to with pride by every son of Ohio; at that time the salary provided for her jurists was $1,800 per annum. She has increased it so today the judges on the supreme bench receive $3,000 per annum. Now, Mr. Chairman, I would ask what sense is there in this great increase of salary by a people poor in worldly goods as we must all admit Nebraska is to day. Indebted to the extent that we are, our state debt increasing from day to day with fearful rapidity, that our tax payers in every portion of the state are bowed down as it were under the load they are compelled to carry by reason of excessive taxation, and by reason of the excessive burdens they are bound to bear. I would ask Mr. Chairman, is there any reason whatever why a state thus poor should payher judiciary—when it is claimed by my colleague (Mr. Woolworth) that she has not the material of sufficient value without importation—these high salaries? It seems to me there is no reason whatever in it. The learned chief justice who has presided during the past four years upon the supreme bench, and who it is admitted has presided with dignity and with credit, he says that the the salary he has received has been entirely inadequate. That may be true. I agree with him in all he has said in respect to that. I agree that $2,000 has been an inadequate salary, but sir, had the salary been $3,000 per annum, had it been what we are proposing to make it in this constitution, then, during the past five years, or nearly five years that he has sat upon the bench, he would have received $5,000 more salary than he has received, and where would have been his loss of $3,500? Would it not have been more than made up? Would he not have had sufficient then so that he would not have been poorer today by $3,500 than when he took his seat upon the bench? and is it not a fact Mr. Chairman, that the purchasing power of $2,000 today is equal at least to what $3,000 would have been during the first years he sat upon the bench, and then, in all human probability that $3,000 during the six years to come will be equal to what $4,000 or $5,000 has been during the six years that have passed. Why sir, it has been remarked that Nebraska is one of the most expensive states in the union to reside in. In some places that has been true, but I do not agree that at the present time it is one of the most expensive states to reside in. All those articles which enter into the daily consumption of families can be provided within our state as cheap or nearly as cheap as in any other state in the union, and much cheaper than in the eastern states, cheaper than in Ohio where the salaries are $3,000, as cheap as in Iowa where they are $2,000, as cheap as in Kansas where they are $1,800 and cheaper than in Missouri where they are only $3,000. Now sir, what is just and what is right, that is the question. Is it just, is it right, that the people of this state should pay $5,000 per annum to increase the private library of any judge that may be elected to sit upon her bench, when she can illy afford to pay out of her state treasury $1,000 per annum to increase the state library which shall benefit the people of the entire state. Why sir, gentlemen talk upon this floor as though it was the duty of the state to make up for gentlemen's private law libraries, that when they retire from the bench they may have a fortune in a private library. If a man has been in the practice of the law and has lived to the age of thirty years and been in successful practice, if he has not already a fair library or the means of purchasing one, then it seems to me that he has practiced law to little purpose, his profession has not been of much use to him. He should have been able at that period of life, at least if he had been a successfulpractioner at the bar to have accumulated enough to purchase at least a respectable law library, if he had not already furnished himself with one, and I do not believe that the people who are living in the dugouts, shanties and mud houses, who are living upon farms not paid for, who are paying interest upon money which they have agreed to pay for their little farms, are in a situation to have wrenched from their muscular hands money with which to fill up the private libraries of gentlemen of learning and wealth. There are two sides to this question, there is the question of what is a just compensation, and then there is the question of ability to pay, and both must be considered in order to arrive at a fair, just and equitable compensation. I agree with all that has been said that a fair compensation should be paid, but I do not think that even for the same order of talent a people poor in worldly goods, nearly next to poverty stricken should be called upon to pay such salaries as a state that is rolling in wealth and whose taxpayers have their hundreds and thousands of dollars out at interest all over the land. Why sir, there is not an improvement within our state of any magnitude but what the taxpayers of our state are held to pay a large amount of interest on the very investment. Where has the money come from that has built our railroads? Where has the money come from that has built our bridges? Where is the money drawn from that is spanning the Platte at one place and another with those beautiful structures which connect the north and the south of our state together? Where does all this money come from? It has been brought from abroad, and the people of the counties have been compelled to tax themselves until they are fairly ground into the dust by excessive taxation, in order to draw these funds from other states, in order that these improvements may be carried forward. How is it with our railroads? Every county throughout our state, through which a road has passed, has been compelled to burden itself with an overwhelming debt, which shall gnaw and eat out the very vitals of the people for years to come, in order to induce that wealth within our limits, look at the bonds which have been issued and are to be issued throughout the various counties and precincts to remunerate those men who have been induced to invest their money in our state. It is easy for gentlemen looking only at their own pockets, and not at the pockets of those who are to pay, to say that $4,000 or $5,000 will not hurt the people. So you might say of any expenditure in the state. When the supreme court asked for an appropriation to fix up the law library, that the supreme court judges might have a respectable library for themselves, and in order to enable them to pass upon questions brought before them with all the intelligence they could acquire. And what response did the appeal meet with? The answer was "we are too poor; we cannot afford it." $1,000 was all that we asked, and the response was founded in reason. It might be truly said $1,000 was a small sum, and would scarcely be felt. But if that was the only sum, Mr. Chairman, it might be true. And these salaries; were they the only salaries the people might stand it, and would not feel it. But when you accumulate all these little sums, which, in themselves, do not amount to much, when you take into consideration the number of these sums which are said to be so insignificant in themselves, when you aggregate them, bring them together, and present them to a people that is poor, to a people that is already overwhelmed with taxation, they will look to them of huge proportions. And I say to gentlemen upon this floor if they desire a new constitution; if they desire a constitution which shall be ratified and approved by the people of this state, they must be careful, exceedingly careful, how they increase the expenses of the state government. An estimate of the proposed increase will show, Mr. Chairman, that the aggregate already proposed by the reports of the several committees, without increasing them, will reach very nearly to $50,000 for salaries alone. And, then, when you take into account the various other expenses that must necessarily be incurred, why, sir, the aggregate sum which will be taken from the hands of toil will be of such magnitude, such huge proportions, as will be perfectly appalling. If these sums which I have mentioned have secured the talent which has been eulogized so highly by gentlemen preceding me on this floor, in other states, will it not have the same effect here? But, Mr. Chairman, the whole question has been surrendered by the gentlemen on the other side of this question when they are forced to the admission that what I declared yesterday upon the floor, that the same order of intellect, the same degree of talent, the same men of learning and ability, will be found upon the bench of our state, with a $3,000 salary per annum, that you would find with $5,000. Let us be considerate, Mr. Chairman, let us look this question squarely in the face; let us weigh not only the wants of the judiciary, but also the ability of our people to pay; and if we do our work wisely and well; if we retain in this constitution, and provide for a character of government which shall not be too burdensome or oppressive, the people will say "well done, good and faithful servants," and will ratify our acts. But if we show a spirit of extravagance, and that we are desirous of placing upon the supreme bench and in other positions of trust within our state, persons merely for the sake of ornament, with little work and large pay; if, in a word, they see we are determined and desirous of making a splendid government; one that shall shine, and one that shall invite all the learning, all the ability and all the erudition that may be found in all the other states, merely through the potent influence of the high salaries; if they see we wish to foist upon them this experiment, they will repudiate our acts, they will throw our pretended constitution back into our faces, and say we were not worthy of the places we had occupied as their servants on this occasion.

Mr. Chairman, I believe I have nothing further to say. I have entered my protest against this scheme of aggrandizing the officers of the state, and supporting them in luxury when the taxpayers of our state are in poverty; paying more than they can afford to pay, already groaning under the oppressive taxes of the present hour; while they are asking every department of the government at the present time, to practice economy; while they are striving, to the best they may, to acquire a competence for the support of themselves and their families; while they are doing all this they ask us here today to do what is just, and what is right and no more. I believe that $3,000 is ample. I believe that no officer provided for in this constitution should receive more than that. If it were desired that the salaries be increased hereafter, when the state is more able to pay, I would not object to a provision which should leave this increase to the action of the legislative body, representing the people, coming from the people, and representing them directly upon this subject. But today, here, as a representative of the people of the state, I do say that, in my humble judgment, $3,000, as a salary for the judges of the courts of this state, is every cent the people of the state can afford to pay, and all that ought to be placed upon their shoulders.

Mr. MANDERSON. I did not suppose, Mr. Chairman, when this little bantling of an amendment of mine was thrown out upon the world that it would receive such a warm reception; and I would be content that it go to a vote, and say nothing on the subject, were it not that I thought it right that I should notice one or two of the suggestions of the gentleman from Douglas (Judge Lake.) And I propose to look at this subject from the same standpoint that he has considered it. First, from the position of the servant of the people; from the position of the office holder, the judge; next, from the position of the taxpayer. I do not know that I could say anything to add to the able arguments made by the gentleman from Otoe (Judge Mason) and my colleague (Mr. Woolworth) as to what is expected of judicial officers, and what they have the right to ask.

But I differ from my friend across the way (Judge Lake) in the idea that honor alone is sufficient compensation for filling high office. True, the position of Supreme Judge is one very exalted and honorable; one, as has well been observed, that is worthy of the highest ambition of the best men. But let us look for an instant at the class of men who will be selected for this great honor. They are not young men, in the first place. As a rule, they are selected from men between the ages of thirty-five to forty, and fifty-five to sixty. They must be men of mature experience to fill the position ably and well. They must bring to the position exalted views. They must bring to the position great learning, and the ability, the power of mind to grasp great ideas and handle them well. Men of that age, as a rule, are men of family. They have depending upon them wife and children. I have in my mind now, a gentleman—and if I would mention his name this convention, with one voice would agree with me—who is eminently fitted to occupy the place upon the supreme bench of this state. His locks are silvered with age. In the pursuit of his profession, he has not gathered much of this world's goods. He is poor in purse, but rich in intellect. He has that greater riches, a mind richly stored with knowledge. He has depending upon him, wife and a number of children—five or six, I believe. These children ranging "from the sleeping child upon its mother's bosom" (if my friend from Otoe, Judge Mason, will imagine the double quotation marks on each side my mouth) to the youth about springing into full fledged manhood. These children demand of him more than bread and butter; they demand more than food for the body. They demand food for the mind. It is his duty to them, as much as it is his duty to feed and clothe them, that he should place them upon the high plane of full, liberal education. His boys clamor to be sent to the high collegiate institutions of the country. Dartmouth and Yale, Harvard and Princeton, open wide their doors to receive and welcome them. And it is his duty to send them there, or to some other place where they can receive an education suitable to fit them for their fight with the world.

His practice affords him an income of, perhaps, six to ten thousand dollars. If called to the bench, of course he sacrifices this income. He is not fitted to go into the busy marts of commerce and strive for wealth and the avenues of speculation are and should be closed to him; he is dependent upon his profession, and after he comes upon the bench, upon his judicial salary. When his children ask for those advantages which are their due—when they ask for that liberal education to which they are entitled, shall he put them off with "honor"?—shall he feed them with "honor?" My colleague, Judge Lake, adopting the sentiment, if not the language of old Sir John Falstaff, says, "Honor pricks me on." I respond in the language of the same fat old knight, "Ah! but honor may prick you off too!" (laughter.) "Will honor set a leg? No!" Will honor buy books and bread for his children?

No! No, sir, money is the only purchasing commodity. I don't believe that a judicial officer can live as he should live and give to his family the advantages they have a right to ask and demand of him on three thousand dollars a year. I think the figures at which I have put these salaries are nearly correct. I think the judges of the supreme court of this state should be paid five thousand dollars per annum. I have taken one view of the matter. Now let us look at the subject from the taxpayer's stand point. Let me say, in the first place, that I believe this body is a fair representation of the people. We have here represented all classes of society—all trades, all professions. We have poor men among us, and we have the rich tax payer. I don't believe there will ever be gathered in this state a body of men who will better represent the different classes of the people. Suppose Mr. Chairman, we give the salaries that we claim here should be given—these salaries that the gentlemen say are so high. Let us look at facts and figures and see what will be the result. Say we have eight judges—five district judges and three supreme judges. Suppose we place these salaries at three thousand dollars each per year. That is $24,000; we give the governor $4,000, and the other executive officers of the state their respective salaries, say $2,500 each. It will foot up $45,500. Now suppose we add to that sum one thousand dollars additional for each of the supreme judges, making their salary $4,000 instead of $3,000. Suppose we add $1,000 to each of the district judges. That makes eight thousand dollars more and the whole amount foots up fifty-three thousand five hundred dollars. If you leave the district judges at three thousand dollars, it leaves th amount forty-eight thousand five hundred dollars. Now Mr. Chairman that is the amount that is suggested should be paid by the amendment of my colleague (Mr. Boyd). I may say here, while I myself am in favor of paying the judges of the supreme court five thousand dollars, I think the committee are not in favor of it, and I will not therefore strenuously press my amendment. So then if we pay the district judges $3,000, it takes $48,500 to pay the salaries of our officers each year. Now what is the assessed valuation of the property in this state? Forty-five million, five hundred and twelve thousand six hundred and fifty eight dollars. One mill upon the dollar! one-tenth of one per cent of the assessed valuation of the property in this state will pay these salaries! Now is this such terrible taxation? We have a population of one hundred and fifty thousand people. Suppose we say that the salaries amount to fifty thousand dollars—which is more than they do amount to according to my showing, that is thirty-three cents to the individual. Should this affright us? Why this taxation for these salaries don't come from the poor people, but from the rich tax payers. But are we so terribly poor? Should we inscribe upon the banner that is held forth to the world by the emigration board, that we are so poor that we cannot pay sufficient salaries to our officers? But we are not poor. We have here a greater property valuation according to our population and a larger public patrimony than any other state in the union. We have here immense corporations which will always be a great source of wealth to us. The taxes upon our railroad property will give enough to pay these so called "high salaries." But, it is said, we should not pay high salaries because other states pay low salaries. Now let me say here, other states seeing the wrong that is being done, are raising the pay of their judges. In 1867, the salaries of the justices of the supreme court of Ohio were raised to $3,000. When I left there, two years ago, the people were clamoring that these judges should receive better pay.

Mr. LAKE. Does not the gentleman know that a proposition to raise the pay of the judges of the supreme court to $5,000, was defeated?

Mr. MANDERSON. Yes sir, and I know why it was defeated. It was done by the same "broad guage" demagoguery that defeats valuable propositions here, (Laughter.) In the state of Iowa I am informed the salary of the supreme justice has been raised to thirty-five hundred dollars. In the state of New York the chief justice gets $9,500 and the associate justices $9,000. But sir, it was suggested by my colleague (Mr. Woolworth) that a large amount of the salaries we propose to pay our judges should be gathered from commencement fees. Now the judiciary committee, of which I have the honor to be a member, was divided upon several subjects. There was no minority report, it is true, but it was understood that that which did not suit the minority would be discussed by that minority in the committee of the whole, or in convention; but in the matter of commencement fees, we thought, generally, they should be continued. If we retain the provision regarding commencement fees, in our constitution, their collection will go a great ways toward paying the salaries of the judicial officers. This great outcry, that the people are being "trampled down by taxation from high salaries" is simply trash. I hope the amendment will prevail.

The CHAIRMAN. The question is upon the amendment offered by the gentleman from Douglas, (Mr. Manderson) to make the salaries of the supreme judges $5,000 instead of $4,000.

The amendment was not agreed to.

Mr. ESTABROOK. Mr. Chairman. I have but a word to say upon this question; but I think I would take the opportunity, after having sufficient time to recover from the condition of repose and calm satisfaction into which I was thrown by the sweet tones of the silvery voices of my colleagues—I say, I think I would take the opportunity of congratulating my self upon the fact that I belong to a profession which is so supremely above all the considerations which influence ordinary minds (Laughter.) What extravagant phrases shall be poured forth by the gentleman who sits upon my right (Mr. Campbell) upon the learning of the profession to which he belongs and then too, I think I can see in the endeavor to put this through that the man who makes the great pow-wow will have his salary increased so that all the learned gentlemen may be upon a par with the other officers of the state. It is asked that the salaries may be increased not only to support their large families, but to send their children to Harvard and Dartmouth. The children of some must be sent away to be educated, while others must dig in the prairies of Nebraska for an honest livelihood, to support these large salaries perchance. I know the legal profession is a large one. There are in this state 300 of them in this state making a living, and we have to pay to these about $1,000 a year each. I happen to know that it don't take much longer to make a lawyer than to make a good tanner and currier. There were two men in the state of Wisconsin, one of them was a lawyer and the other was a tanner, who got into a dispute about a point of law. Well they disputed for some time. "Well," said the lawyer finanlly, in order to clinch the matter and put an end to all question and controversy, "my friend, I will stake my reputation as a lawyer, that it is so." "Well," said the other, "I'll stake my reputation as a tanner and currier it is not so," and he was right.

Well now, is there anything about the fact that it takes a lawyer to fill the position. We all know under the practice of our law a lawyer is only expected to show that he has read two years and passed through a very cursory examination, and he can then take this title upon him. Now, sir, what are some of the duties of this learned profession? Why sir, there is a guide board at every turn to point out the way, so that the merest tyro can understand and expound it. You will find there is scarcely a question can arise which has not been passed upon over and over again; and let me suggest that these great duties have not been secured by high paid salaries; perhaps the greatest argument that ever was made, was that referred to here today, made by Webster on that occasion and that he volunteered to do without a cent of pay. Since reference was made to this decision this morning I went down to see what chief justice Marshall received at that time and found it was $4,000.

Mr. MASON. Would not $4,000 at that time be more than $10,000 would be now?

Mr. ESTABROOK. No sir. Now that leads me to make this remark. Since that time many of the states have increased the salary of its officers on account of higher prices, but that cause no longer exists; prices have come down but salaries have not. I don't plead poverty for this state and ask that these salaries shall be made low on that account, no sir, I stand here today to say that the state of Nebraska has greater resources today than any other state in the union with but few exceptions, and she can well afford to have every thing she wants and needs and if I could be induced to believe that we could get better talent by making this salary above the usual rates I should support it. I don't suppose that any individual will desire to take upon himself this position for the purpose of educating his children at Harvard, if so I say he had better invest his capital in railroad bonds or something that will pay better,—If as the chief justice himself says he can perform these duties in six months. Let them spend the six months in the education of their children at home and I don't see but what they might spend about three months gratuitously in giving instruction or lectures in some of the schools of the state.

Mr. MANDERSON. Will the gentleman permit me to ask him a question?

Mr. ESTABROOK. Certainly. I will; I am not making a speech.

I do not understand how it is that the lawyers all rush to the rescue and insist that their services are so far superior to the service of everybody else. I am glad to hear it. I know that the profession is an honorable one, superior to all others in the estimation of the world. I will undertake to say that any man of ordinary ability can within a reasonable length of time and within the same length of time it takes a man to make a basket qualify himself in the fundamental principles of law. What do you think of a juryman? He does not have to be exceedingly learned. He is the man who decides your cases, he is a man who perhaps never opened a law book except to read the herd law and scarcely understands which is the law among the multitudes of them, or how to construe it when he finds it. As a juryman he has opened before him the books of the law, he is made to apprehend, it takes no great learning to understand the principles of right and wrong. You take three boys from one family, one is a farmer, one is made a lawyer and the other peradventure is a doctor, they are all about smart alike, all have pretty good sense, but when you come to adjust the payments of salaries and the like, you pick up the fellow that had taken up the legal profession and say he shall have such a salary as shall enable him not only to live without work six months in the year, but educate a large family at Harvard. Well I am in favor of the first report, it secures the best we have. I will not suppose sir, that in filling these benches individuals shall be selected and taken from a large practice, a large practice is not always an indication of fitness to fill a supreme bench or other bench. Individuals acquire practice through influential friends. I know a man who brought money, loaned it out and forclosed mortgages and with the little amount of law he possessed has acquired not only reputation as a lawyer, which I do not think he deserves, but has at the same time brought wealth into his exchequer. Thus it is he becomes a noted practitioner, and it is said he would not leave his business to fill any position on the bench. It is not his great learning that has brought him reputation or wealth, simply circumstances. I have been in the frontier all my life, and the best judges I have ever seen upon the bench were those who were educated there, men who had hardly any practice, because it needs one kind of education to be a practitioner at the bar and another to be a judge at the bench. The best judges I have seen are those coming without any great eclat as practitioners, they are the best men I ever saw sitting on a bench. I was told the other day by Mr. Woolworth that the regents, a very important position in the state of New York were appointed for life and discharge very important duties there without so much as one cent. It would be a matter of sincere regret to me that my friend from Otoe (Mr. Mason) should ever think for a moment of leaving the bench he so adorns, but if he can make more practicing his profession of course he should adopt it, if he cannot live without educating his children as he desires. If his statements upon this floor be true that even while a member of the supreme bench and at the same time doing circuit duty in one of the largest circuits in the state, if he can still get six months of the year to himself, I wonder if he cannot bring some of that extra learning of his to bear in his own family so as to save the necessity of sending his children to Harvard. It was the course adopted by Benton, I think he had not a child that he did not educate himself.

Mr. MASON. Now Mr. Chairman, for a single moment I desire to expose the speciousness of what has been enlarged upon. When the gentleman talks about men educating their own children and at the same time delving into the knowledge of the law, he talks what he knows in his heart has not the slightest foundation in truth. It is not for myself I speak, it is for every property holder in this state. It is sir, for the life, liberty of person and the security of character, and sir, let me say, men may talk as they may but hunger is a dangerous counselor, and to place a judge in a position where he is straightened in his money circumstances at every crook and turn of life is most dangerous for the security of social order. And sir, were I to step aside and travel over this whole field and ask what you pay your representatives and senators in congress. What ability, learning and experience do they bring to bear that oversteps and outrides that brought to the bench by my learned associate from Douglas (Mr. Lake). You pay those men $5,000 or $10,000 a year with less ability, learning and experience, do less for the public safety, who touch not the security of character or person and yet that is not too much, and yet these gentlemen stand here to plead for penurious salaries for the very men that are laying the foundations of social order and law. Let us pay in proportion to the services rendered. Will any gentleman tell me from the Douglas delegation; will that gentleman himself tell me that Justice Lake has not earned for this state at least $5,000 per year ever since he has adorned the bench in the second circuit. If there is a man that will say that, let him stand in his place and speak, and it is not, Mr. Chairman, that I would give salaries to educate my children at Harvard. No, sir, I would not do it if I could. I would not dwarf the mind any more than I would the body. I would learn them in the school of toil as well as in the school of culture. When gentlemen resort to such specious and lame arguments as this it becomes me to expose the utter fallacy of the principle they contend for. Why, put in the balance, weigh the services of this gentleman I have alluded to against your senators and congressmen; against your governor, or against any of these men, and tell me if he has not toiled night and day, early and late, to establish firm and secure the rights of property, and life and character, and it is by his efforts that people of today retire tonight secure in the possession of their property. And yet, you pay $3,000 for one, and $10,000 for the other! Now, sir, I would not go to the extreme on either side. I say the people, everywhere, demand that these judicial officers be paid sufficient to keep their families and libraries, and not that they shall become teachers of infants schools; but that they shall study night and day to acquire a knowledge of the law. Besides, sir, what man, gentlemen of this convention, will do that unless you do pay him. You can get men for $3,000 a year, who will turn infant school teachers for six months of the year; but that is not what the people demand. They want the man that shall be teacher of himself in a knowledge of the law for the twelve months of the year. I simply make these remarks to expose the inherent fallacy of the gentleman's argument. He knows that no men are born lawyers. It is a knowledge only accomplished by constant toil. One other fallacy, and it was amusing to me—a gentleman who knows the law, and knows that no jury in the land has any right to declare the law, they find and determine the facts. They take the law from the oracle of the law, the judge speaking from the bench——

Mr. ESTABROOK—Not in privy cases.

Mr. MASON.—Aye, in every case, for them to override the law and trample the instructions of the court under their feet is to violate their oaths. This they have the physical power to do. They always have had that power. But they have no legal right to do so. So says Justice Story, in a note in Greenleaf on Evidence; so says Marshall and so says Kent, and they ought to know about as much about the law in this regard as the gentleman from Douglas. And no law writer has ever said anything else, but that they have the physical power to disregard the law as declared by the court, but not a legal right to do. If their salaries could do it I would establish a rule of law that should be just as stable and fixed as the laws of nature which should be a rule of right changed only to meet the wants of society in its progressive advance to that better day when all shall know and do the right; that should be as certain as the decrees of Nature itself. And to do this I would have no infant school teachers. I would have a man that devoted his whole time to study of the law and if he wanted to teach infant schools, and read psalms and sing hymns, I would not want him for my judge.

Mr. HASCALL. I move that the committee rise, report progress , and ask leave to sit again.

The motion was not agreed to.

The CHAIRMAN. The question occurs on the amendment of the gentleman from Douglas (Mr. Manderson.)

Mr. MANDERSON. I withdraw it.

The CHAIRMAN. The question now is on the amendment of the gentleman from Douglas (Mr. Boyd), making the salaries of the judges of the supreme court $4,000, and the judges of the district courts $3,000.

Mr. STRICKLAND. I call for a division of the question before the vote is taken.

The CHAIRMAN. The chair will state that the amendment of the gentleman from Douglas does not propose to change the salaries of the judges of the district courts.

Mr. STRICKLAND. I understand that the question ought simply to be on the salary of the supreme judges.

Mr. MANDERSON. Let me suggest. I think we ought all to have the right to vote first on the salary of the supreme judges, and then upon the district judges.

The CHAIRMAN. The chair will state that this only relates to the salary of the supreme judges.

The committee divided and the motion was lost by 22 to 26.

The CHAIRMAN. The question is upon section thirteen, as reported by the committee.

Mr. STRICKLAND. I move to amend by inserting $3,500 instead of $3,000, to apply to supreme judges.

Mr. BOYD. I move an amendment to the amendment, to strike out $3,000 in the first line and insert $3,500.

Mr. STRICKLAND. What is the difference?

Mr. BOYD. Mine refers to both; yours only to supreme judges.

The motion to make the salary of the supreme judges $3,500 was agreed to.

Mr. KIRKPATRICK. I move the committee do now rise, report progress, and ask leave to sit again.

The motion was not agreed to.

Mr. WILSON. I move that the section as amended be now adopted.

Mr. GRAY. I move one further amendment. That after the words "district courts," in the first line, "shall each receive a salary of $3,500."

Mr. Gray's amendment was not agreed to.

Mr. BOYD. I move to strike out "$3,000" and insert "$2,500." I am in favor of small salaries, if there is to be this trouble.

Mr. STRICKLAND. I hope the gentleman will not lose his temper.

The motion of Mr. Boyd was not agreed to.

Mr. LEY. I move the committee rise, report progress, and ask leave to sit again.

Mr. KIRKPATRICK. I move to insert the words "increase or."

The CHAIRMAN. The amendment offered by the gentleman from Cass is to insert the words "increase or."——

Mr. KIRKPATRICK. Mr. Chairman. It seems to me provision should be made that salaries should not be increased.

Mr. ROBINSON. Mr. Chairman. I understand there is a provision somewhere which provides for a revision of all salaries of officials. I think this is a better way to regulate the matter than to do as we are doing.

The CHAIRMAN. The question is upon the amendment of the gentleman from Cass (Mr. Maxwell) to insert the words "increase or."

The amendment was agreed to.

Mr. WAKELEY. Mr. Chairman. I wish to move an amendment by striking out the words, in the second line, "until otherwise provided" and insert, "unless increased." The section now reads that the judges shall receive the salary which we have fixed until otherwise provided by law. Under that law it would be, unquestionably, within the province of the legislature to diminish; to that I am opposed. I would not give the legislature the authority to diminish a salary which we have fixed; in other words, if a minimum is adopted the salary which we have fixed shall be the minimum, and while the legislature may increase it, it cannot diminish. I think the committee will agree to that.

Mr. WEAVER. Mr. Chairman. I move the committee rise, report progress, and ask leave to sit again.

The motion was agreed to.

Mr. McCANN. Mr. President. The committee have had under consideration the report of the judiciary committee and beg leave to report progress and ask leave to sit again.

Adjournment.

Mr. LEY. Mr. President. I move we adjourn until two o'clock.

The motion was agreed to.

So the convention (at twelve o'clock and twenty-two minutes) adjourned.

Afternoon Session.

The convention met at two o'clock and was called to order by the president.

Engrossment.

Mr. REYNOLDS. Mr. President. Your committee on engrossment, beg leave to report that they have examined the Bill of Rights and find it correctly engrossed.

Rights of Suffrage.

Mr. MAXWELL. Mr. President. Your committee on Rights of Suffrage to whom was recommitted the article on rights of suffrage, beg leave to report that they have to report that they have had the same under consideration, and report the same back without any change, and ask that it be adopted..

The report was referred to the committee of the whole.

The following is the report.

Section 1. Every male person of the age of tewenty-one years or upwards, belonging to either of the following classes who shall have resided in the state, county, precinct and ward for the time provided by law shall be an elector.

First. Citizens of the United States.

Second. Persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States on the subject of naturalization.

Sec. 2. The legislature may extend by law, the right of suffrage to persons not herein enumerated, but no such law shall be in force until the same shall have been submitted to a vote of the people at a general election, and approved by a majority of all votes cast on that question at such election.

Sec. 3. No person under guardianship, non compos mentis or insane, shall be qualified to vote, nor shall any person convicted of treason or felony unless restored to civil rights.

Sec. 4. No elector shall be deemed to have lost his residence in the state by reason of his absence on business of the United States, of this state, or in the military or naval service of the United States..

Sec. 5. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed therein.

Sec. 6. Electors shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and going to and returning from the same. And no elector shall be obliged to do military duty on the days of election, except in time of war or public danger.

Sec. 7. All votes shall be by ballot.

Miscellaneous Corporations.

Mr. MOORE. Mr. President. I would offer a report from the committee on Miscellaneous Corporations.

The secretary read the report as follows:

(No Copy.)

The report was read the second time by its title, ordered printed and referred to the committee of the whole.

Mr. MYERS. Mr. President. I move the convention proceed to the consideration of the Bill of Rights to prepare it for its third reading and adoption.

The motion was agreed to.

The PRESIDENT. The article will be read the third time and put upon its passage.

The secretary read the article as follows:

THE CONSTITUTION OF THE STATE OF NEBRASKA.

PREAMBLE.

We the people of the State of Nebraska, grateful to Almighty God for the civil, political and religious liberty which He hath so long permitted us to enjoy and looking to Him for a blessing upon our endeavor to secure and transmit the same unimpaired to succeeding generations, in order to form a more perfect government, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and posterity do ordain and establish this constitution for the state of Nebraska.

ARTICLE 1ST.

BILL OF RIGHTS.

Sec. 1. All men are by nature free and independent and have certain inherent and inalienable rights, among these are life, liberty, and the pursuit of happiness. To secure these rights and the protection of property governments are instituted among men deriving their just powers from the consent of the governed.

Sec. 2. No person shall be deprived of life, liberty, or property, without due process of law.

Sec. 3. The free exercise and enjoyment of religious profession and worship without discrimination shall forever be guaranteed; and no person, shall be denied any civil, or political right, privilege or capacity on account of his religious opinions, but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No person shall be required to attend or support any ministry or place of worship nor shall any preference be given by law to any religious denomination or mode of worship.

Sec. 4. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty, and in all trials for libel, both civil and criminal, the truth when published with good motives and for justifiable ends, shall be a sufficient defence.

Sec. 5. The right of trial by jury as heretofore enjoyed shall remain inviolate, but the trial of civil cases and misdemeanors before justices of the peace and inferior magistrates by a jury of less than twelve men may be authorized by law.

Sec. 6. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizure shall not be violated and no warrant shall issue without probable cause supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

Sec. 7. All persons shall be bailable by sufficient surety except for treason and murder where the proof is evident or the presumption great, and the privilege of the writ of habeas corpus shall not be suspended unless where in case of rebellion or invasion the public safety may require it.

Sec. 8. No person shall be held to answer for a criminal offense except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment and in cases arising in the army and navy or in the militia when in actual service in time of war or public danger unless on a presentment or indictment of a grand jury or information of a public prosecutor and provisions shall be made by law for the impannelling of grand juries whenever the respective courts or the judges shall order.

Sec. 9. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation and to have a copy thereof, to meet the witnesses face to face, and to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

Sec. 10. No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

Sec. 11. All penalties shall be proportioned to the nature of the offense and no conviction shall work corruption of blood or forfeiture of estate, nor shall any person be transported out of the state for any offense committed within the same, nor shall cruel and unusual punishments be inflicted.

Sec. 12. No person shall be imprisoned for debt arising out of or founded on a contract express or implied, except in case where there is strong presumption of fraud.

Sec. 13. Private property shall ever be held inviolate but subservient to the public welfare. When taken or damaged in time of war or other public exigency imperatively requiring its immediate seizure or for the purpose of making or repairing roads which shall be open to the public without charge, a compensation shall be made to the owners in money and in all other cases a compensation shall be first made in money or first secured by a deposit of money. Such compensation shall in every case be without deduction for benefits to any property of the owner and when not made by the state shall be assessed by a jury in such manner as shall be prescribed by law. The fee of lands taken for railroad tracks without the consent of the owners thereof shall remain in such owners subject to the use for which it was taken..

Sec. 14. No ex post facto law, or law impairing the obligation of contracts or making any irrevocable grant of special privilege or immunities shall be passed.

Sec. 15. The military shall be in strict subordination to the civil power.

Sec. 16. No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law.

Sec. 17. The people have a right to assemble in a peaceable manner to consult for the common good, to make known their opinions to their representatives and to apply for a redress of grievances.

Sec. 18. All elections shall be free and there shall be no hindrance or impediment to the right of a qualified voter to exercise the elective franchise.

Sec. 19. Treason against the state shall consist only in levying war against the state or in adhering to its enemies giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court.

Sec. 20. The writ of error shall be a writ of right in all cases of felony and in all capital cases shall operate as a supersedeas to stay the execution of the sentence of death until the further order of the supreme court in the premises.

Sec. 21. The privilege of the

debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws exempting a reasonable amount of property from seizure or sale for the payment of any debts or liability.

Sec. 22. Aliens who are or may hereafter become bonafide residents of this state, shall enjoy the same rights in respect to possession, enjoyment and inheritance of property as native born citizens.

Sec. 23. All courts shall be open and every person for an injury done him in his land, goods, person or reputation, shall have remedy by due course of law, and justice administered without denial or delay.

Sec. 24. A frequent recurrence to the fundamental principles of civil government is absolutely necessary to preserve the blessings of liberty.

Sec. 25. The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons being one of these departments shall exercise any power properly belonging to either of the others except as hereinafter expressly directed or permitted.

Sec. 26. This enumeration of rights shall not be construed to impair or deny others retained by the people and all powers not herein delegated remain with the people.

The PRESIDENT. This is the third reading of the bill. The question is on its adoption. The secretary will call the roll.

The secretary called the roll and the President announced the result: Yeas, 45, as follows:

YEAS.

Abbott,
Ballard,
Boyd,
Campbell,
Curtis,
Eaton,
Estabrook,
Gibbs,
Granger,
Gray,
Griggs,
Hascall,
Hinman,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Ley,
Lyon,
McCann,
Majors,
Mason,
Manderson,
Maxwell,
Moore,
Myers,
Neligh,
Philpott,
Newsom,
Price,
Reynolds,
Scofield,
Shaff,
Sprague,
Stevenson,
Stewart,
Thummel,
Thomas,
Tisdel,
Towle,
Vifquain,
Wakeley,
Weaver,
Wilson,
Woolworth,

ABSENT OR NOT VOTING.

Cassell
Grenell,
Parchin,
Parker,
Robinson,
Spiece,
Mr. President—7.

The PRESIDENT. The question is on the adoption of the preamble.

The Preamble was adopted.

The PRESIDENT. The question now is on referring the article to the committee on revision and adjustment.

The article was so referred. NEM CON.

Committee of the Whole.

Mr. GRAY. I move that the convention go into committee of the whole on the article entitled judiciary.

The motion was agree to, so the convention went into committee of the whole, Mr. McCann in the chair.

The CHAIRMAN. The question is upon the amendment of the gentleman from Douglas to strike out the words "until otherwise provided," in the second line, and insert "unless increased by law."

The committee divided and the motion was not agreed to.

The thirteenth section as amended was adopted.

The secretary read the next section as follows:

Sec. 14. No judge of the supreme or district courts shall receive any other compensation, perquisite or benefit in any form whatsoever, nor perform any other than judicial duties to which may belong any emoluments.

Mr. LAKE. If the section conveys the idea that the committee had in view, it is that the legislature cannot provide that judges of the supreme courts shall perform some trivial duty as an excuse for giving a large increase of compensation. There have been endeavors, in times past, to provide that judges and other officers may perform some duties outside their legitimate duties, and as a compensation therefor provide a large increase of pay.

The fourteenth section was adopted.

Mr. HASCALL. Mr. Chairman. yesterday we passed over a section for the time being; and I propose now to take it up. It was the plan for dividing the state into districts.

Mr. WAKELEY. Mr. Chairman. I do not see how that can be offered without permission of the committee, after we have once passed. We are entitled to go through the article and I hope we shall do so.

Mr. HASCALL. This was only passed over for the time-being. Since then the matter has been thought of and plans matured. And as we have to finish it before we report it back to the convention, it would be well enough to take it up now. I therefore move that we take up that article now.

Mr. ESTABROOK. The true practice is, I believe, to pass through, section by section, and when we have concluded, that the bill is open to amendment in all its parts. And I would suggest to my colleague whether that is not the best way to reach it?

Mr. HASCALL. We have neglected to comply with that rule now, and by general consent we passed by "for the time-being." This section has not been considered and acted on. Before the whole is taken up, we must consider every section. We have not considered every section.

Mr. KIRKPATRICK. I hope the convention will proceed to the consideration of this report, and we will return to the section. There was a reason why we postponed it. The gentleman says he has a plan: Others may not.

The committee divided, and the motion was not agreed to.

The Chairman read section fifteen, as follows:

Sec. 15. There shall be elected in and for each organized county one judge, who shall be judge of the county court of such county, whose term of office shall be two years.

Mr. THOMAS. Mr. Chairman. I move to amend this section, by adding "but the legislature may create districts of two or more contiguous counties, in each of which shall be elected one judge, who shall take the place of and exercise the powers of jurisdiction of county judges in such districts." I will state that that is copied from the Illinois constitution.

Mr. LAKE. I do not know that I am opposed to this proposition to amend. I will say that at one time a majority of the judiciary committee adopted this precisely, but upon a re-consideration of the matter it was stricken out. The committee was about equally divided as to the propriety of the amendment offered by the gentleman from Nemaha.

Mr. THOMAS. I will state that the object is that in cases where a county has not a sufficient population to justify the organization of a court in that county, the legislature may provide that several counties may be united, and make one district, and have one county judge to preside over that district.

The committeee divided and the amendment was agreed to.

Mr. WAKELEY. Mr. Chairman. I move to strike out the word "two" in the first line and insert "four."

Mr. MYERS. Mr. Chairman. I move to strike out the word "four" and insert "nine," so that it shall read "nine years" instead of "four years."

The CHAIRMAN. The question is upon the amendment to the amendment of the gentleman from Douglas.

The amendment to the amendment was not agreed to.

The CHAIRMAN. The question now recurs upon the amendment.

Mr. WAKELEY. Mr. Chairman. I think that the term of office of a judge of a court of record, as these county courts will be, should be not less than four years. It will be remembered that you make these county courts, courts of record, and that you give them considerable jurisdiction, that to a considerable extent they take the place of district courts. Everybody knows that if a judge is at all fit for his office he is a better judge at the end of two years than before. I would not make the term of office so long that the people cannot get rid of a poor judge, if they should elect a poor one, nor would I have the judge constantly changing. I think four years is a very just medium between the two extremes.

Mr. HASCALL. Mr. Chairman. There is no reason why we should insert an amendment like that in the constitution. It will create confusion and will clash with the election of judges as provided by our present law.

Mr. GRIGGS. Mr. Chairman. I hope the amendment offered by the gentleman from Douglas (Mr. Wakeley) will not prevail. If we have a good judge, we can re-elect him and if not we can get rid of him at the end of two years. Two years is the term of office of the other county officers. Suppose, for instance, there was two or more counties joined into one district and the term of office of the judge of that district had three years to run, when it was found that the county was fully up so that each county was entitled to its judge. It seems to me that it places things in a very bad box. I believe a term of two years will suit the people in the western counties much better than four years. If we succeed in electing a good judge we can re-elect him. I hope that the amendment to make his term of office four years will not prevail.

The CHAIRMAN. The question is upon the amendment to strike out two years and insert four years.

The amendment was not agreed to.

The CHAIRMAN. The question is upon the adoption of the section.

The 15th section was adopted.

The Chairman read the next section, as follows:

Sec. 16. County courts shall be courts of record, and shall have original jurisdiction in all matters of probate, settlement of estates of deceased persons, appointment of guardians and settlement of their accounts, in all matters relating to apprentices, and in proceedings for the collection of taxes and assessments, and such other jurisdiction as may be given by general law; provided, that in counties having a population of three thousand and upwards, the legislature may confer upon said courts jurisdiction in sales of real estate by executions, administrators and guardians. But they shall not have jurisdiction in cases of felony, nor in actions in which the title to real-estate is sought to be recovered, or may be drawn in question, nor in action on mortgage, or on contracts for the conveyance of real estate, nor when the debt or sum claimed shall exceed five hundred dollars.

Mr. KIRKPATRICK. Mr. Chairman I would suggest that there is a mistake in the sixth line; the word "executions" is substituted for the word "executors."

Mr. THOMAS. That is a typographical error.

The CHAIRMAN. It will be corrected by common consent. The word "sales" in the same line should read "sale." That mistake will also be corrected in the same way.

Mr. THOMAS. Mr. Chairman. It seems to me a constitution should be clear and explicit and I think this section is not quite so much so as it might be. I therefore move to amend by striking out the words "cases of felony" in the 7th line, and inserting the words "criminal cases in which the punishment may exceed six months imprisonment or a fine of over $500."

The CHAIRMAN. The question is upon the amendment of the gentleman from Nemaha (Mr. Thomas.)

Mr. LAKE. Mr. Chairman. The object in using the word "felony" was to enable the legislature to confer such jurisdiction, in criminal cases upon these courts as they should see fit, but in no case to give these courts jurisdiction when the punishment is confinement in the penitentiary, but not greater than that. I think the word "felony" indicates that class of cases when the punishment is by imprisonment in the penitentiary at least.

Mr. THOMAS. Mr. Chairman. I understand that the common law definition of the word felony is "a crime which is punishable by forfeiture of goods and chattels. When there is no statute, we have to resort to the common law to find the definition. It seems to me the section is defective and we should put some words to this effect, stating what the punishment shall be.

Mr. LAKE. Mr. Chairman. I would like to ask the gentleman if the word "felony" is not defined by our own law, and further, if under our present form of government we have any such thing as "forfeiture of estate."

Mr. THOMAS. We have not, but when we have no statute upon it we cannot find out the definition of terms without resorting to the common law.

The CHAIRMAN. The question is upon the amendment of the gentleman from Nemaha (Mr. Thomas.)

The amendment was agreed to.

Mr. SCOFIELD. Mr. Chairman. I move to strike out in the ninth line the words "five hundred" and insert "one thousand."

The committee divided and the amendment was not agreed to.

The CHAIRMAN. The question is on the adoption of the section.

Section sixteen was adopted.

Mr. WAKELEY. Mr. Chairman. Before the next section is read I desire to offer an amendment to be adoptetd as a separate section.

The Chairman read the amendment as follows:

"Appeals to the district courts from the judgment of the county courts shall be allowed in all criminal cases on application of the defendant, and in all civil cases in which the amount in controversy does not exceed one hundred dollars and in such other cases as the legislature may provide."

Mr. GRIGGS. I move to amend the section offered by the gentleman from Douglas (Mr. Wakeley) by striking out the words "one hundred" and inserting "twenty-five."

The amendment was agreed to.

Mr. SCOFIELD. Mr. Chairman. I move to insert the words "upon the application of either party," in civil cases.

Mr. GRIGGS. Mr. Chairman. Will that interfere with the giving of appeal bonds in civil cases.

Mr. WAKELEY. I will state, Mr. Chairman, the only object of the section is to make it obligatory on the legislature to provide for the taking of appeals.

The CHAIRMAN. The question is on the adoption of the section (it will be section 17) as amended.

The committee divided and the section was adopted.

The Chairman read the next section as follows:

Sec. 18. Justices of the peace and police magistrates shall be elected in and for such districts, and have and exercise such jurisdiction as may be provided by law.

Mr. WAKELEY. Mr. Chairman. I move to amend by adding a proviso.

The Chairman read the amendment as follows:

"Provided that no justice of the peace shall have jurisdiction of any civil cause where the amount in controversy shall exceed one hundred dollars nor in a criminal cause where the punishment may exceed three months imprisonment, or a fine of over one hundred dollars, nor in any cause involving a title to real estate."

Mr. ESTABROOK. Mr. Chairman. I would like to inquire whether a justice of the peace ever has jurisdiction of such cases, if not, where is the need of this provision?

Mr. PHILPOTT. Mr. Chairman. I move to amend the amendment by adding the following:

"Except in actions for trespass and action of unlawful entry and forcible entry and detainer."

Mr. MASON. Mr. Chairman. I trust the amendment offered by the gentleman from Lancaster (Mr. Philpott) will not prevail, there can be no question as to that class of causes. In no case where the matter of title be involved can a court of justice act, nor can there be any probability of their undertaking to determine the other questions; hence it should not be interpolated in this amendment. Neither in the action of trespass can the title necessarily be drawn into question. I cannot now call to mind a question of trepass purely where title is necessarily drawn in question. Suppose I am owner in fee of a piece of land anotherer man may have the present possession of it, if I enter upon it I trespass on his rights; my plea of title has nothing to do with the determinatio n of trespass. I think the amendment should not prevail.

Mr. PHILPOTT. I will withdarw my amendment for the present.

Mr. LAKE. Mr. Chairman. I think myself all the amendments that have been offered to this section are entirely useless, endeavoring to provide against something there is no danger of. There never has been a desire on the part of anybody to confer upon the justices' court the jurisdiction that is endeavored here to guard against. No one has ever proposed it. You might as well attempt to provide in the constitution that the sun should not roll backwards, rise in the west and set in the east. No one contemplates conferring any extraordinary jurisdiction on justices of the peace. It never was broached in the legislature, never has been anywhere, they are considered an inferior court, not a court of record, there is no danger whatever of any difficulty arising from leaving the subject of justices' jurisdiction entirely to the legislature, it has been so throughout all time within the life of the state of Ohio, it is so, if I recollect right in the state of Iowa, and it seems to me if we take this section as it came from the committee that it is ample, leaving the jurisdiction with the legislature of the state.

Mr. HASCALL. Mr. Chairman. There are cases I conceive which would be beneficial if left to the legislature. We have a law on the statute book now that makes it a misdemeanor to cut timber on lands of another and the jurisdiction is given to justices of the peace. If the defendant pleads not guilty that involves the question of title to the land, because the plaintiff to make out his case must prove that the land is his own and not the land of another. It is a confirmation of title on the one part and denial on the other. I think the matter is safe in the hands of the legislature. It is generally understood that a magistrate's court is an inferior court, and no legislature would ever attempt to make anything else out of them.

Mr. THOMAS. Mr. Chairman. I agree with the gentleman who spoke last that this matter should be left to the legislature. It seems to me the section should be amended so as to except action for trespass for real estate. I do not see any necessity for an amendment concerning justices.

Mr. ESTABROOK. Mr. Chairman. I suggest that we add "where a title to real estate is in issue."

Mr. WAKELEY. I do not accept the suggestion, I think it is right as it is. I only desire that this matter shall be settled as is precisely right. I do not see the consistency of establishing a county court as a court of record and putting various limitations upon its jurisdiction and then leaving the legislature at liberty to give justices of the peace any jurisdiction they see fit. Under this article as it stands it will be in the power of the legislature to give justices of the peace jurisdiction superior to that which we have conferred upon county courts. Now if it is really our intention to leave this large jurisdiction to the legislature then let us vote down the amendment. What propriety or consistency is there in these limitations to the legislature in respect to the jurisdiction of county courts? We all understood these county courts are superior to justices of the peace and we have found it necessary to limit the jurisdiction of county courts which are courts of record; which to a considerable extent take the place and exercise the power of district courts. I do not say the legislature would abuse the discretion but I do say it is proper to set some bounds upon the powers of the legislature in respect to these inferior courts. The question is whether you are to trust entirely to the discretion of the legislature, or put some limitation upon them.

The committee divided and the amendment was agreed to.

The CHAIRMAN. The question is upon the section as amended.

The eighteenth section was adopted.

The Chairman read the next section, as follows:

Sec. 19. All laws relating to courts shall be general and of uniform operation; and the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade, so far as regulated by law, and in force and effect of the process, judgments and decrees of such courts severally, shall be uniform.

The section was adopted.

The Chairman read the next section, as follows:

Sec. 20. The legislature may, for cause entered on the journals, upon due notice and opportunity for defence, remove from office any judge of the supreme or district courts, upon concurrence of three-fourths of all the members elected of each house. All other officers in this article mentioned shall be removed from office on prosecution and final conviction for misdemeanor in office, in such manner as may be provided by law.

The section was adopted.

The Chairman then read the next section, as follows:

Sec. 21. All judges of courts of record, inferior to the supreme court, shall, on or before the first day of June of each year, report in writing to the judges of the supreme court, such defects and omissions in the laws as their experience may suggest; and the judges of the supreme court shall, on or before the first day of January of each year, report in writing to the governor such defects and omissions in the constitution and laws as they may find to exist, together with appropriate forms of bills to cure such defects and omissions in the laws. The judges of the several district courts shall report to the next legislature the number of days they have held court in each of the several counties composing their respective districts, during the preceding year.

[The section was adopted.]

The Chairman read the next section, as follows:

Sec. 22. All officers provided for in this article shall hold their offices until their successors shall be qualified; and they shall respectively reside in the district, county or precinct for which they shall be elected or appointed. The terms of office of all such officers, when not otherwise prescribed in this article, shall be two years. All officers where not otherwise provided in this article, shall perform such duties and receive such compensation as may be provided by law.

The section was adopted.

The Chairman read the next section, as follows.

Sec. 23. In case the office of any judge of the supreme court, or of any district court shall become vacant before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor until a successor shall be elected and qualified; and such successor shall be elected for the unexpired term at the first annual election that occurs more than 30 days after the vacancy shall have happened. Vacancies in all other elective offices provided for in this article. shall be filled by election; but where the unexpired term does not exceed one year, the vacancy may to be filled by appointment, in such manner as the legislature may provide.

The section was adopted.

The Chairman read the next section, as follows:

Sec. 24. All process shall run In the name of the People of the State of Nebraska, and all prosecutions shall be carried on In the name of the people of the State of Nebraska, and conclude against the peace and dignity of the same.

The section was adopted.

Mr. WOOLWORTH. Mr. Chairman. I desire to correct a section to provide for commencement fees. It is this—"the legislature shall impose a tax on all civil suits commenced or prosecuted in courts of record, which shall constitute a fund to be applied towards the payment of the salaries of judges." Mr. Chairman, I do not propose to add anything this afternoon to what I said this morning upon this subject. But I hold in my hand the report of the auditor showing the amounts of money received by the state from these sources. It amounts, in all, to the sum of $17,855. The amount received in the Second Judicial District was $9,580, a sum, I think, sufficient, or nearly sufficient, to pay the salary of the judge of that district during the whole time he sat upon the bench. I have not had time to compare the sums received from the other districts. In the 1st Judicial District was $5,625. Now, this is a source of revenue which I would save by a proper provision in the constitution.

Mr. STEVENSON. I move an amendment to the amendment—that is to except county courts.

Mr. WOOLWORTH. I accept the amendment.

Mr. ESTABROOK. Now I move an amendment to the amendment by striking out the words "or prosecuted." If a judgment is taken by an individual on default in order to correct errors, he takes an appeal, and has to pay the initial fee as in the original.

Mr. MYERS. Mr. Chairman. I do not know that I understand this provision offered by my colleague, or that I am prepared to vote for it. I do not think it right, or proper, or expedient, that we should base the salaries of the judges upon the emoluments of their office and the fees in courts. It is establishing the principle that the higher the salaries of the judge the higher should be the fees for obtaining justice in our courts. I do not make that a point, but it may be made a point in the mind of the public. I read in the bill of rights "every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he shall obtain by law, right and justice, freely and without being obliged to purchase it, completely and without denial, promptly and without delay." Now, we make this money that is received in fees a basis upon which to find a payment of those salaries.

Mr. MANDERSON. A substitute similar to it was stricken out, but covering the same ground. Justice should be dealt out without money and without price. That was the purport of the amendment which the gentleman himself offered. I believe the proposition is wrong in principle, and for that reason, I hope it will not prevail. I certainly shall not vote for it, if I am the only man in this committee to oppose it.

Mr. TOWLE. Mr. Chairman. If it is possible, I like to have a thing called by its proper name. This is simply class taxation. It works against justice; against the rights of parties. I undertake to say that this $9,000 of revenue which it seems has been raised in this way, has been $9,000 taken out of the pockets of the lawyers of this state. Parties may be too poor to pay the commencement fees and too proud to make the necessary affidavit to that effect in order to be able to bring suit without paying the fees. Parties have come to me for legal advice, with regard to collecting a debt, for instance, and when asked for a retainer fee, I have been told they had no money to pay down; then when told that upon making this affidavit of poverty, they could bring suit, they have told me that they were poor, but too proud to do this, consequently they were put to unusual exertions, and in many instances unjust sacrifices, in order to meet the demands of this tax. If you can put on a tax fee of $5, why not put on a tax of $500? You have just as much right. After having stated that people shall have justice in this state without money and without price you have just as much right to place a tax upon them in this way of $500 as $5.

There are places where this commencement fee will work great injury. I do hope this convention will not endorse it. I have been asked time and time again to use my influence to have this fee stricken out. Other states have nothing of the kind in their constitutions and why not leave it to the legislature? Let us place our own state, as we are rising in the scale of commonwealths upon the same level of the other states of this Union—not one of them has this unusual and improper tax—It is but an advertisement of our insignificance and poverty—It destroys the proportion and symmetry of our constitutional structure—the other parts are noble, grand and complete in their outlines—while this is but a broken turret—a shriveled limb on a healthy body.

Let justice be free and open—don't put up a statue of the Goddess, holding aloft the scales, yet peeping from under the bandage over her eyes, to discover the amount of gold the suitor may have who kneels at her shrine—the cause of him who seeks the tribunals of justice, for the reparation of his character, the recovery of his property, for damages done by the bludgeon of the assaulter, is the cause of the whole community. For his case is but a precedent to control the wicked or protect the property of the community at large—this proposition takes a wider range than to affect the interests of the individual suitor—suppose the legislative power shall pass such laws as trample upon the sacred rights of the minority (that minority on behalf of which many gentlemen upon this floor have grown eloquent) party spirit and the passions of the hour run high—the whole executive power of the state is brought to bear to oppress the citizen—Now is the time that demands some Hampden to defend his rights and the rights of the people—not because to obey the law or pay the tax would ruin him or the people financially, but because to submit would debase him to a slave. A man who steps forward in this hour of peril and exigency is a public benefactor and he alone should not bear the burden of prosecuting his suit —therefore let the judiciary be supported from the general fund—not wrung from out the depleted pockets of an injured suitor who is driven to the courts for the redress of wrongs already inflicted.

Mr. HASCALL. Mr. Chairman. I move an amendment by striking out the word "shall," in the first line, and insert "may." I propose to get this as little objectionable as possible.

Mr. NEWSOM. Mr. Chairman. It may be this provision acts against lawyers; it may be it prevents litigation; it may be it keeps cases out of the courts. If this is so it is a blessing to this country. I claim I am not a lawyer, but I claim that I have as much interest in this, as any lawyer in this state. Upon what principle of justice do you say that I shall pay a portion of the expenses of the suit of any man in our courts? What right have I to say to the gentleman from Richardson (Mr. Towle) that he should pay part of the expenses of my law suits when I go into the courts? It is my judgment that when a man goes into the courts, he should pay the expenses. If a man allows himself to be swindled, let him pay for his experience. I can see no bearing upon this case which will affect the community. What portion of the people of the state is it that have law suits? Is it the greater part of the population or the few? In my judgment it is the few. I am opposed to this idea of legislating for the benefit of the three or four hundred lawyers in this state. This would be for the benefit of lawyers exclusively. Now there is a provision by which if a man is too poor to conduct his suits, they will be attended to. If he is too proud to take advantage of this, it is nothing to me. I don't want to pay for this pride. I am willing to help a poor man, but I am not willing to help an able man—one who is able to take care of his own affairs. I never had a law suit in my life, and I don't propose to have any if I can help it. Now gentlemen, you propose to tax me to pay your law suits, and I oppose the proposition.

Mr. TOWLE. Mr. Chairman. I don't see any particular argument in the gentleman's remarks, only that he wants, when a man goes into court, that he should pay for it. It appears to me there is no argument in it at all. I still oppose the system of commencement fees. I believe it is wrong in principle, and hope it may be done away with.

Mr. PHILPOTT. Mr. Chairman. I too am opposed to the adoption of this section. The idea is a wrong one, and the system is wrong. I ask by what principle of justice shall we say that those who are compelled to go into courts to get their rights, should be compelled to pay the judge for not only trying his case, but for other cases, which come before him. I think it has worked great hardship.

Mr. ABBOTT. Mr. Chairman. I believe that the most of the lawyers here will sustain this amendment.

Mr. MOORE. Mr. Chairman. I propose an amendment to that.

The Chairman read the amendment as follows:

"Provided, When a person shall make affidavit that he is too poor to pay the commencement fee he shall be exempted from paying such fee."

Mr. WOOLWORTH. Mr. Chairman. I accept the amendment of the gentleman from York (Mr. Moore.)

The CHAIRMAN. Gentlemen, the chair is in doubt whether the amendment offered by the gentleman from Douglas (Mr. Hascall) to strike out the words "shall" and insert the word "may," has been put and (It has not.)

The CHAIRMAN. Then the question is on that amendment now.

The Committee divided and the amendment was agreed to.

The CHAIRMAN. The question is on the adoption of the section as amended.

Mr. MASON. Mr. Chairman. Before this proposition is finally submitted to a vote I feel like saying what I have to say on this matter. I do not believe sir, that the tribunals of justice are established or kept in motion simply for those who employ them in litigation.

That man who brings a suit in our courts, sometimes where only a few dollars are in litigation, is often the greatest benefactor of the state. Take for instance the man who was compelled to pay for the litigation referred to by the gentleman from Douglas (Mr. Woolworth) which called forth from Chief Justice Marshall and his associates a decision of law for the whole country. In other words which set a light on the judicial hill of our land that casts its rays over the whole people. That man is sufficiently unfortunate in being compelled to litigate to secure his rights without being compelled to pay a special tax for so doing. As has been well said these judicial courts have been established for something more than the mere settlement of litigation. They are to speak the law for the whole people of the state, to interpret that law by which the whole people of the state are to be governed. No sir, what does the plaintiff in bringing suit say? He says, "my rights have been trampled on and I appeal to that law which you, the people of the state, have established for the safety of your rights and mine." Now, sir, I undertake to say that in the security of individual rights rests the security of the aggregate whole, and when it is said he who dances should pay the fiddler, but sir, in this case it is the people of the whole state that dances. It is the rights of the people of the whole state that trembles in the balance whenever litigation is had in our courts, and the whole state should be moved to see that he has his disenthroned rights, and sir, he should not be taxed for that right. Is it right? No sir, it is not in my judgment. I ought to feel the same interest in securing your legal rights as my own, and if I don't so feel, then sir, I disregard the words of that greatest of law givers, the one not born of earth, but of heaven, who said "do unto others as you would have others do unto you." It seems to me we do violence to this fundamental principle, and sir, for these reasons I shall vote to lay the whole amendment and section on the table.

Mr. MYERS. Mr. Chairman. A motion to lay on the table is not in order in committee of the whole.

Mr. MASON. Indefinitely postpone.

Mr. MYERS. Neither is that motion in order, the only way we can dispose of this is to vote it down.

Mr. WILSON. Mr. Chairman. I have had a little experience in this matter of paying commencement fees and I say it is the greatest curse that ever was placed upon any people. You place that in your constitution and I say the people of Johnson county will vote down your constitution. I think it is a piece of swindle, and I hope every honorable gentleman upon this floor will vote against it.

The CHAIRMAN. The question is on the adoption of the proposed section.

The section was not adopted.

Mr. PHILPOTT. Mr. Chairman. I offer the following as a separate section:

"There shall be elected in and for each judicial district in this state, one district attorney whose term of office shall be two years. The duties of the office and salary shall be prescribed by the legislature."

Mr. MYERS. Mr. Chairman. I move to amend that the salary and duties of the office shall be regulated by the legislature.

Mr. PHILPOTT. I accept the amendment.

Mr. LAKE. Mr. Chairman. For one I am opposed to the amendment offered by the gentleman from Lancaster (Mr. Philpott). I am in favor of leaving this subject of district attorneys entirely to the legislature. It may be possible that in a few years it will be best to have prosecuting attorneys for some counties of the state, at least in some of the larger and more populous counties. In some states they have adopted the plan of prosecuting attorneys for each county of the state but in a state where so many counties have so small a population as Nebraska, it is best perhaps that district attorneys be not provided. This matter has been left to the legislature heretofore and I think it is unwise to encumber the constitution with useless provisions. If it shall be found that the system of district attorneys does not work well, then of course the legislature will be invested with the authority to make a change. Leave it entirely to the law making power, and whatever system of states attorneys shall be thought best, or be found best in practice, the legislature undoubtedly will adopt. We have had no reason for a provision of this kind heretofore in our constitution and what is the necessity now? Let it remain as it has been in years past, subject to the regulations of the law making power. Most certainly the legislatures are of sufficient intelligence, of sufficient knowledge in regard to the wants of the people of the state, to regulate the matter in such manner as shall conduce to the best interests of the state. I see no necessity for this provision; it is worse than useless, because if the system should be found to work advantageously there will be no remedy, it being a constitutional provision, but if left as it is, it is subject to the control of the law making power and the wishes of the people of the state.

Mr. PHILPOTT. Mr. Chairman. I am decidedly in favor of county prosecuting attorneys but opposed to district attorneys. I merely want the matter voted upon.

The motion was not agreed to.

Mr. HASCALL. I have a proposition to follow the word "follows" in section ten.

The Chairman read the proposition as follows:

First District. The counties of Richardson, Nemaha, Johnson, Pawnee, Gage, Saline and Jefferson.

Second District—The counties of Otoe, Cass, Lancaster, Saunders, Seward and Butler.

Third District—The counties of Douglas and Sarpy.

Fourth District—The counties of Washington, Burt, Dodge, Cumming, Colfax, Stanton, Madison, Wayne, Dakota, Dixon, Cedar, Pierce, Antelope, L'Eau Qui Court, and the counties and Territories lying due west of L'Eau Qui Court

Fifth District—The counties of Platte, Boone, Greeley, Howard, Hall, Merrick, Polk, York, Fillmore, Thayer, Nuckolls, Clay, Hamilton, Adams, Webster, Franklin, Kearney, Harlan, Buffalo, Sherman, Dawson; Lincoln, Cheyenne, and all other counties and territory not included in any other judicial district.

Mr. HASCALL. Mr. Chairman. In preparing this I attempted to name all the counties whose boundaries have been defined by law, and for fear that some county might have been omitted, I say all other counties.

Mr. MYERS. I move to strike out the word "country" wherever it occurs, and insert the word "territory."

Mr. HASCALL. I accept the amendment.

The committee divided and the proposition was agreed to.

Mr. WAKELEY. Mr. Chairman. There are two or three sections I desire to have inserted at proper places in the article. The first I move is as follows:

The legislature shall provide by law in what manner and in what courts suits may be brought against the state.

I move it be inserted as one of the sections.

Mr. LAKE. It may be that the gentleman has proposed this way of taking the sense of the convention. If there be a provision inserted in the constitution authorizing the state to be made a party defendant, that the legislature will have that authority without any expresssed provision in the constitution to provide where those suits shall be brought. It seems to me better to insert this provision in some other article.

Mr. WAKELEY. Mr. Chairman. As to the place where the section shall be inserted I am not at all particular. It sems to me that the article on the judiciary is the appropriate place for it. It relates to courts —the right to make the state a defendant in courts, and I think the sense of the committee may as well be taken upon the proposition now as at any future time. I am aware of the section the legislative committee have reported. Furthermore the committee on revision have a right, and it is a part of their duty to place all the provisions of the constitution under appropriate articles; and I see no impropriety in considering the matter now. I shall not withdraw the section. In my judgment, the provision is a very important one.

In the first place in reply to the suggestion of the chairman of the judiciary committee I think that, upon reflection, he will agree with me, that, without this provision, the legislature will not have the power to provide for making the state a defendant. The theory upon which it has always been held that the state could not be sued was that it was inconsistent with the sovereignty to be sued by one of its citizens in one of its courts. That theory has been carried out in the U. S. and in many states of the union. By special provision in the constitution of one state at least, as to which I speak from personal knowledge, suits may be brought against the state. Now, sir, I think it is very obvious and apparent, that there ought to exist a provision in the constitution, or under the law, by which the state of Nebraska may be made a defendant. I do not think it necessary to argue the proposition elaborately. Going back, for a moment, to the origin of the doctrine that a sovereignty can not be sued because it is derogatory to its dignity to be brought as a defendant into its own courts, it is manifest that to carry out such a doctrine may and inevitably will in many cases, do injustice to the citizens. Against the right of suing the sovereign in the courts, it has always been argued that the citizen should look to the justice of the sovereign alone and appeal to the legislative department of the government for redress. If necessary to argue that proposition, the history of the whole country is filled with instances where citizens for years and years, for a whole lifetime, have been suppliants in vain at the feet of the sovereign for the plainest justice and right. It is only within a few years that the United States has provided a form in which the citizen could bring a suit against it. Before that was done it is common history that that lifetimes were spent in beseeching congress to allow the most just claims; and those rejected claims were handed down from one generation to another, and while justice was continually denied. But since a court was provided in which the merits of the claim could be tried in the ordinary modes of law, justice has been done and the United States made to pay just claims. What is true in regard to the United States is also true in regard to states. And, instead of sovereignty being a reason why the citizen should not bring it into court there is the strongest of all reasons why he should. The very fact that he is dealing with sovereignty places the individual at enormous disadvantage . This is the obvious reason why there should be a right to sue the state. I shall be surprised if any gentleman shall suggest that it should not be done. I believe that the distinguished gentleman, the chairman of the judiciary committee, will, on reflection, be satisfied that without this provision the principle will be successfully invoked upon which the citizen has always been turned out of the courts. I regard it not only as a proper provision but, as a most valuable and indispensable one in our organic law. If this is not the proper place for it I am perfectly willing it should be inserted elsewhere. But I believe this is the appropriate time to offer it.

Mr. LAKE. I think the gentleman who has just taken his seat misunderstood what I said when I was on the floor last. I most certainly agree with him that unless there is some provision in the constitution authorizing the state to be made a party defendant in a suit at law or equity, at the instance of an individual citizen, that it could not be done. What I said, or intended to say was this—that it would be better to leave this matter which he now proposes, to be considered when the article which I referred to, reported by the legislative committee, should come under consideration. In their report I find this provision, Sec. 45 —"The state of Nebraska shall never be made defendant in any court of law or equity." Now, if this should be the sense of the convention then the gentleman's proposed section would be rendered nugatory, that is, useless. If, however, when the vote shall come to be taken upon this section which I have just read, when the legislative article should be under consideration, I say if the majority of the convention should be all honest, that this section should not prevail, they would provide, probably, that the state of Nebraska might be made a party defendant in suits both at law and equity, and then, as an addition to this section, the provision the gentleman is now contending for might be added. The state of Nebraska may be made a party defendant in the courts of law and equity in this state, and the legislature may provide in what courts such suits may be brought. The permission to bring the suit, and the authority on the part of the legislature to provide before what tribunals should have jurisdiction in those cases, could all be inserted in one section. I only objected at the present time, to incorporating this section in the judiciary article.

Mr. MYERS. I am somewhat at a loss to know the operation of this amendment proposed by the gentleman from Douglas (Mr. Wakeley) to make the state a defendant in the collection of claims, or suits for the recovery of money that may be due to the state or be due from the state to parties claiming. I believe that under royalty very great injustice has been practiced, and parties have been kneeling at the throne and deprived of their due. The king cannot pursue, but I would like to know whether that applies under this rule, in a republican form of government where the door is open for the prosecution of claims against the state without going into the court of justice? The legislature in states where this law prevails have a committee on claims, who hear parties having bills to collect against the government, and I consider it a dangerous thing to open the door for these prosecutions against the state. They are generally parties who have claims which have been refused by the proper officers; claims in excess of contracts, or for articles furnished to the state which did not comply with the agreement, as to their quality, nature or amount. When their claims came before the legislature fully and fairly, I know of fifteen or twenty claims that were presented at the last legislature, that I know, of my own knowledge to have been clean, clear frauds upon the state, and they were rejected. Now so far as my knowledge and experience goes on this subject, the legislature is always willing to allow just and honest claims against the commonwealth, and if we send honest and just men to the legislature these dishonest claims will always be negatived. Some man may have been cheated in a contract with some other party—the penitentiary inspectors, for instance. He may come into the courts of justice and keep your law officers constantly employed. I know of no party being allowed unjust claims. There are claims for Indian fights and Indian wars, amounting to $23,000. These claims for good reasons have all been rejected—have been killed.

Mr. MASON. Mr. Chairman. I don't believe a more important question to the whole state, has been moved than the one now under consideration, and for the reason suggested by the gentleman from Douglas who has just sat down, whether this provision should go into the constitution is a matter of the greatest importance. Our legislature passed upon some claims last winter, which have been before the legislature seven times, and will probably come up seven times seven, yet. Now, if this were done in a court of justice, you would put the record upon the persons making these claims and stop them. Another thing; you have but to look out here upon your public grounds surrounding this building, and you will see where $2,000 were paid for planting out forest trees, which I undertake to say that I can contract for, for the sum of $25.00; and the auditor of state protesting against the bill for these trees, and yet it was allowed. All this would have been impossible if we allow the state herself to become a party defendant in some of our courts of justice. In the courts we have nothing but the supremacy of the law. That is the sovereign before which the state ought to bend the knee; and, sir, that law should be open for the humblest, whether his claim be against the state or against the county. Why, is it that the state should surround herself in majesty and say "I have created these courts?" In the olden times the bringing of a king or sovereign before a tribunal of justice was not thought of, because, they said, "the king can do no wrong;" but let us wipe out this relic of barbarism. Let us provide that the state can be sued in some one of our tribunals, and then the legislature can say to those presenting claims against the state, "we turn you over to the proper tribunal of justice; and establish your claim there." Who of those within the sound of my voice, that have sat in the legislature and does not know of the debates that arise where claims are presented, where if the witnesses were required to stand up and swear to the facts upon which these claims were sought to be made good, they would fall to the ground. I would not let the state be sued except in special tribunals appointed by the legislature, and then I would require that every man who had a claim against the state, should go before that court and establish his claim, and then the legislature should make an appropriation to pay it. Fraud after fraud was perpetrated upon the federal government until it was driven to the establishment of the "Court of Claims." If a man has a just claim against the state, there should be provision made for the recognition of this claim and payment of it. But I don't believe Mr. Chairman, this amendment should be made here. I think perhaps the proper place is in the legislative article. But, sir, I do say that this convention should do itself the honor of saying to the state "bow down and worship the sovereignty of the law." I would remove from the legislature this source of annoyance and trouble, and turn it over to the courts of justice who are fitted to deal with this class of cases. I would not let every constable, nor every sheriff in the land be authorized to serve papers upon the state, but I would permit her to come into the highest tribunal in the state. Then justice will be done. I hope this amendment will receive the sanction of the committee. It can then be turned over to the legislative committee and placed where it belongs.

Mr. ROBINSON. Mr. Chairman. I wish to offer a substitute.

The secretary read the substitute as follows:

The supreme court and the several district courts shall each in addition to its ordinary powers and jurisdiction be a court of claims wherein all claims against the state may be prosecuted. The mode of its procedure, the effect and execution of its judgments and decrees shall be prescribed by law.

Mr. MYERS. Mr. Chairman. I acknowledge the force of the apostrophe of the chief justice (Mr. Mason.) Now as to the claim which has been referred to about the trees. I believe that has been definitely settled. The contract sum agreed to was $3,000. The auditor refused to pay the sum, and the bill was sent to the legislature. A deduction of a thousand dollars was allowed, and I need not say that if the claim had been taken into the courts I believe the whole amount could have been collected. Now sir, I can buy these trees which remain here for $20.00. The auditor may have had ulterior reasons for refusing to pay the claim. Many of these trees, perhaps, hundreds of dollars worth, were not furnished to the state but were furnished to private individuals who used them to adorn their grounds, and that was one reason why the legislature docked the bill $1,000 and the reason why the aduitor of state, an honest man, Mr. Gillespie, refused to audit the account. I don't believe the state should be dragged into the courts to be held accountable to every scallawag.

Mr. STRICKLAND. Mr. Chairman. I move to amend by striking out the word "rejected," and putting in these words, "for the payment of which no appropriation is made by law."

Mr. ROBINSON. I accept the amendment.

Mr. LAKE. Mr. Chairman. I wish to read an amendment which I will propose.

"The legislature may provide by law for the prosecution of claims against the state and in what tribunals and under what regulations the same shall be prosecuted."

Mr. PRICE. Mr. Chairman. I hope there will be a provision made in the constitution by which the state may be sued, for the claim of individuals. Reference has been made here by the gentleman from Douglas (Mr. Myers) to the calling out of the militia. I believe he stigmatized it as a fraud. I know something about that and to that I wish to reply. The constitution of the State of Nebraska provides that the governor shall have power to call out militia of the state whenever it is deemed necessary. At that time the Indians made a raid upon the southwestern part of the state, the governor called out the militia in this section of the country, they served under the direction of the governor and they put in their bill and have had to depend on the legislature for the pay, and sir, they have never got a cent of pay yet, but are today doing without that money on account of the laws made by the legislature last winter. I shall insist upon the amendment.

Mr. ESTABROOK. Mr. Chairman. There is a provision in the constitution of the state of Wisconsin and it reads thus:

"The legislature shall provide by law, in what manner and in what courts a suit may be brought against the state."

If I can find a provision in the constitution of another state I shall prefer to adopt that, for the reason that their decisions will be of some benefit to us. I think that the idea that the state cannot be sued is of regal origin as suggested by the gentleman from Otoe (Mr. Mason.) I think it is right and a true republican idea to allow a person to bring action against the state for claims as in other cases, in the usual way. It is true when a matter is claimed before the legislature it is generally upon some caprice that it is rejected or allowed, but if you will bring it before the court, it seems to me the question does not arise whether the dignity of the state shall be humbled, but the simple question whether the claim made be a just one, and shall be allowed. That it seems to me is the fair common sense idea of this section. Under this constitution of Wisconsin it is required that the person shall first present his claim before the legislature and if it is rejected he has recourse to the supreme court. If I understand the gentleman from Otoe it is not intended that every claim shall be brought before the court, but only where the claimant and the legislature differ. I find this provision "Suits may be brought against the state, according to such regulations as shall be made by law" in the constitutions,—of Alabama, Pennsylvania, and Delaware, and the following: "The General Assembly may direct by law in what manner and in what courts suits may be brought against the state," in the constitutions of Wisconsin, Illinois, Indiana, Kentucky, Mississippi, Nevada and Arkansas.

Mr. MYERS. Mr. Chairman. I wish to say in regard to this claim referred to by the gentleman from Jefferson (Mr. Price) I voted for that claim and helped to put it through this house and I was taunted at afterwards for voting for a fraud.

Mr. WAKELEY. Mr. Chairman. In regard to the different propositions before the committee, I would like to say a word. I think that the amendment offered by the gentleman from Lancaster———

Mr. ROBINSON. Mr. Chairman. I will withdraw my amendment, if the amendment offered by the gentleman from Douglas (Mr. Wakeley) is the same as in the Wisconsin constitution.

MR. WAKELEY. I copied it from the Wisconsin constitution with the change of but one word, "provide" instead of "direct." I think there has just been a cause here, where it is necessary to make the state a party defendant in order to foreclose its mortgages in the Tichenor case. I think the provision should be broad enough to allow the state to be made a party defendant, where the claim affects the interests of the state, as in this case.

The prosecution of a claim against the state is one thing, but a man may claim property where the title is vested in the state. Various cases may be thought of where the state should be made a party defendant, but where the plaintiff is not prosecuting any claim against the state, unless you use the word claim in a very broad sense. Suppose your state was in possesion of real property and some citizen of the state chooses to contest the title, I do not think that is a claim against the state and I do not believe there is any necessity for making the language as restricted as in the amendment offered by my colleague (Mr. Lake.) It seems to me the section as I offered it is sufficient for all purposes.

Mr. LAKE. I withdraw my amendment.

The section was agreed to.

Mr. ESTABROOK. Mr. Chairman. I move the adoption of the following

"The several judges of the courts of record in this state shall have such jurisdiction at chambers as may be provided by law."

I looked carefully over the article and did not see any provision made for jurisdiction at chambers. I copy it from the constitution of Kansas.

Mr. LAKE. Mr. Chairman. I think that section is an appropriate one and ought to be embodied in this article, it was omitted really by mistake, I had the matter in contemplation at the time the article was being prepared, but through an oversight it was neglected. I hope the section will be adopted by the committee.

The section was agreed to.

Mr. WAKELEY. Mr. Chairman. I do not wish to monopolize the business of offering amendments to this article, but I have another:

"Sec.——District courts shall appoint a clerk for each county who shall hold his office for a term of three years unless sooner removed by the court, and thereafter until his successor is appointed and qualified."

Mr. LAKE. Mr. Chairman. For one I prefer that this matter should be left to the legislature and that no provision should be made for the appointment of a clerk in this article. It has been heretofore left to the legislature and I am in favor of leaving it there still. I see no good reason why the legislature might not be left in control of the subject, to provide either for their appointment by the court or election by the people. In most of the states now, judges of the court like our district courts provide for the election of the clerks by the people, and I believe that generally that is the popular plan. I prefer not to encumber the constitution with unnecessary provisions. If the legislature sees fit to leave the appointment to the judges they will do so, if they think best to provide for the election by the people they wil do so; they will do what they think best for the people of the state at large. I hope the committee will leave it where it is.

Mr. WAKELEY. Mr Chairman. I do not know but this matter might be properly left to the legislature but I prefer to see this provision put in the constitution. I think there is eminent propriety in vesting the appointment of clerks in the courts. I think the courts have so much better opportunities of knowing the qualifications of a clerk, so much better opportunities of knowing whether he possesses proper skill, experience and frame of mind to make a good clerk. Of course in all ordinary cases the people should elect their officers but the clerk of the court has peculiar duties to perform in connection with the records of the court, very delicate and responsible duties to perform in connection with the records of the papers of the court. He is moving under the immediate eye of the judge, and certainly the judge of the court has greater opportunities for knowing the qualifications of the clerk than the people have. Every member of the bar will, I think, confirm what I say and if members of the committee agree with me I do not see why we should not insert it in the constitution. We have already adopted a similar provision in regard to the clerk of the supreme court, and I know of no reason why one officer should be left to the people that would not require the election of both to be left to the people. I consider it a matter of some considerable importance.

Mr. MASON. Mr. Chairman. I hope the amendment may prevail. I believe it desirable. I think every judge who is responsible for the keeping of a proper record ought to appoint his own clerk.

Mr. BALLARD. Mr. Chairman. I hope the motion will not prevail. I do not wish to see that system of appointment inaugurated in this constitution. The same reason that my friend from Douglas (Mr. Wakeley) assigns for the appointment of clerk of the court will carry out with other officers of the court. I hold the people should be left free to elect their own servants. I hope the motion will not prevail.

Mr. HASCALL. Mr. Chairman. I shall always leave everything as far as my vote will go, with the people. I shall vote against the proposition.

The proposition was not agreed to.

Mr. MAXWELL. Mr. Chairman. I wish to amend the second section by adding to it the words "provided that not to exceed one judge of said court shall be elected from any one county."

Mr. MAXWELL. The reason of this amendment is as far as possible

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Mr. HINMAN. I rise to a point of order that it is not right to go over this section by section and amend after we have adopted the section.

The CHAIRMAN. The chair understands that the point of order is well taken.

Mr. ESTABROOK. I hope the chairman will not settle upon that rule.

Mr. MAXWELL. Then I offer this as an independent section. It reads:

"Provided that not to exceed one judge of the supreme court shall be elected from any one county."

Now, Mr. Chairman, it is desirable, as far as possible to distribute the judges of the supreme court throughout the state. There are cases of a local character that may come before that court, such as a judge, perhaps, might not act upon unbiased. And it is desirable to take one from one part of the state, and another from another, and one from the third part of the state. Without some such provision as this, all the judges might be elected from one county. We are all aiming to have an independent supreme court. Now, some of the large counties of this state might, probably will not, but they might, elect all the judges. They might elect two of them. If we permit one county to elect but one judge, then we distribute one to the southern and one to the northern, and one, perhaps, to the central part of the state. And I think the court will be much more efficient than it would otherwise.

Mr. LAKE. I would suggest to the gentleman, if he is in earnest in his desire that they continue to reside where they are elected. Suppose the three should conclude that it was best that they should reside at the capital, would the gentleman object to that? He desires to have them scattered about over the state. The business of the judges of the supreme court is at the Capital; there is the place for them really, most of the time, especially when the business of the state shall be such as requires their attendance there at long sessions of the supreme court. I would recommend that the gentleman incorporate in his amendment "that no judge, after being elected shall be permitted to remove from the county in which he resides at the time of his election."

Mr. HINMAN. Suppose we should nominate a man from Douglas county, Judge Lake, for instance, for the republicans. Suppose on the other hand, we should nominate Mr. Woolworth or Judge Wakeley, on the other side, and by some peradventure they should be elected, then, I would suggest, the amendment would be impracticable

Mr. WAKELEY. I think that, in the case suggested by the gentleman from Lincoln, on general principles, the democrat ought to be declared elected.

The committee divided and the section was agreed to.

The CHAIRMAN. The question is upon the adoption of the article as amended.

Mr. ESTABROOK. I would call the attention of the chairman of the committee to section twenty-two, the last section of the article. "All process shall run in the name of the people of the state of Nebraska, and all prosecutions shall be carried on in the name of the people of the state of Nebraska, and conclude against the peace and dignity of the same." What kind of prosecutions are meant here? Is this intended to apply to criminal prosecutions ———

Mr. HINMAN. I rise to a point of order.

Mr. ESTABROOK. State your point of order.

Mr. HINMAN. The section is not before the house.

The CHAIRMAN. Does the gentleman propose to amend?

Mr. ESTABROOK. Yes, sir, I propose to amend.

Mr. HINMAN. I insist on my point of order.

Mr. ESTABROOK. State your point and then I will argue. I would like to have this question settled. May be, I don't know anything about parliamentary rules. But I know that in this, as well as in any other, you first go through section by section, and then you harmonize the whole. We pass along and almost without knowing the entire object of a section and adopt it. Now, it is absolutely necessary to travel back, so as to make the parts harmonize with each other. I merely call the attention of the chairman of the committee to it.

The CHAIRMAN. Does the gentleman offer an amendment?

Mr. ESTABROOK. Yes. I desire it to be amended.

Mr. MASON. I have an amendment I desire to offer———

Mr. ESTABROOK. To this section?

Mr. MASON. No, sir. I thought there was no section before the convention.

Mr. ESTABROOK. I was enquiring whether———

The CHAIRMAN. Does the gentleman offer an amendment?

Mr. LAKE. Mr. Chairman. I will answer the gentleman that the original copy was correct but———

Mr. MASON. Mr. Chairman. I thought I had the floor.

Mr. ESTABROOK. I have the floor.

Mr. MASON. I see you have. You have a great many places you ought not to have. I will let the gentleman explain.

Mr. LAKE. The difficulty the gentleman complains of is all owing to the want of proper punctuation and the omission of capital letters. In the original bill it was correct. But here we have only commas, where there ought to be semicolons. There should be a semicolon after the word "run;" after the word "Nebraska;" after the word "on;" after "Nebraska" again, and after the word "conclude."

Mr. ESTABROOK. I enquire further, whether it should not say indictments.

Mr. LAKE. It is almost the same language as used in the old constitution. We never have experienced any difficulty. The constitution, too, of Illinois, with the exception of the name of the state, and the words "by the authority," has precisely the same language; but the punctuation of the article, as printed, is different.

Mr. ESTABROOK. In the case of a prosecution for misdemeanor would it not be fatal to omit to say it was "against the peace and dignity of the state of Nebraska?"

Mr. LAKE. It should read so.

Mr. ESTABROOK. Then I offer an amendment—"and all indictments and information shall conclude against the peace and dignity of the same."

Mr. LAKE. Mr. Chairman. That will leave the section substantially as it now is but with a large amount of verbiage which is entirely unnecessary. All informations before magistrates are also included here. It don't change the section at all, but renders it very bungling indeed.

Mr. ESTABROOK. Well, I will withdraw it.

Mr. KIRKPATRICK. Mr. Chairman. I would like to hear this point of order which has been raised, settled.

Mr. HASCALL. I would call the gentleman to order. There is no point of order raised.

The CHAIRMAN. The chair holds that after the article has been amended, it is still open for amendment section by section.

Mr. MASON. Mr. Chairman. I have a section I desire to see added. The object is to remove the election of judges from the influence of party feeling, as much as possible. The section reads;

"Ballots for judges shall be deposited in separate boxes to be provided for that purpose."

Mr. STRICKLAND. (To Mr. Mason) Does that apply to all the judges?

Mr. MASON. I would say all.

Mr. STRICKLAND. Mr. Chairman. I move to amend by making it "supreme and district judges."

The CHAIRMAN. The question is upon the amendment of the gentleman from Douglas (Mr. Strickland).

The committee divided and the amendment was not agreed to.

The CHAIRMAN. The question is upon the section offered by the gentleman from Otoe (Mr. Mason).

The committee divided and the section was not adopted.

The CHAIRMAN. The question recurs upon the adoption of the article as amended.

The article was adopted.

Mr. MAXWELL. Mr. Chairman. I move that the committee rise, report the article back to the convention, as amended, and recommend that it be engrossed.

The motion was agreed to.

Mr. McCANN. Mr. President. The committee of the whole have had under consideration the article on "Judiciary" and beg leave to report the article back as amended, and recommend that it be engrossed.

Adjournment.

Mr. MYERS. Mr. President. I move we adjourn until tomorrow morning at 9 o'clock.

Mr. McCANN. Will the gentleman give way one moment. If we recommend that the article be engrossed, it cannot be amended in convention. As it is, it is still subject to amendment in convention.

The PRESIDENT. The article will not be engrossed.

Mr. MYERS. Mr. President. I renew my motion to adjourn until tomorrow morning at nine o'clock.

The ayes and nays were demanded.

The secretary proceeded to call the roll.

The President announced the result—ayes, 14, nays, 33—as follows:

YEAS

Cassell,
Estabrook,
Kirkpatrick,
Griggs,
Kenaston,
Lake,
Maxwell,
Myers,
Neligh,
Philpott,
Price,
Robinson,
Scofield,
Wilson—14

NAYS

Abbott,
Ballard,
Boyd,
Campbell,
Curtis,
Eaton,
Gibbs,
Granger,
Gray,
Hascall,
Hinman,
Kilburn,
Ley,
Lyon,
McCann,
Majors,
Mason,
Manderson,
Moore,
Newsom,
Reynolds,
Shaff,
Sprague,
Stevenson,
Stewart,
Thummel,
Thomas,
Tisdel,
Towle,
Vifquain,
Wakeley,
Weaver,
Woolworth—33

ABSENT OR NOT VOTING.

Grenell,
Parchin,
Parker,
Spiece,
Mr. President—5.

So the motion to adjourn until tomorrow morning at 9 o'clock was not agreed to.

Mr. MANDERSON. Mr. President. I move we adjourn until this evening at eight o'clock.

Leave of Absence.

Mr. KIRKPATRICK. Mr. President. I ask leave of absence until tomorrow morning at 9 o'clock.

Leave granted NEM. CON.

Mr. WAKELEY. Mr. President, I would like to know what is the status of the report of the judiciary committee.

The PRESIDENT. Under the order of business it will be taken up at two o'clock p. m. tomorrow.

Adjournment Again.

The PRESIDENT. The question is upon the motion to adjourn until 8 o'clock this evening.

The convention divided, and the motion was agreed to.

So the convention (at six o'clock) adjourned.

Evening Session.

The convention met at 8 o'clock p. m., and was called to order by the president.

Privileges of the Floor.

Mr. SCOFIELD. Mr President I have a resolution I wish to offer.

The secretary read the resolution as follows:

"Resolved, That the convention takes pleasure in extending the privileges of the floor of this hall to Hon. I. N. Shambaugh and Hon. H. Calhoun."

Mr. McCANN. Mr. President. I move the adoption of the resolution.

The resolution was adopted.

Electoral and Representative Reform.

The PRESIDENT. Gentlemen of the convention, the special order for this evening is to take up the report of the committee on electoral representative reform. The question is on going into the committee of the whole.

The motion was agreed to.

So the convention in the committee of the whole, Mr. Stevenson in the chair—proceeded to consider the minority report of the committee on electoral and representative reform.

The CHAIRMAN. Gentlemen of the committee, we have under consideration this evening the report of the committee on electoral and representative reform. The secretary will read the proposition.

The secretary read the following:

PROPOSITION.

At any election when three or more persons are to be elected to the same office by the same constituency, each qualified voter may cast as many votes for any candidate as there are persons to be elected to such office, or may distribute the same, or equal parts thereof, as he may see fit, among the candidates not exceeding the number to be elected. The candidates highest in votes shall be declared elected; or if an equal vote for two or more having the requisite number, shall require it the choice between them shall be made by lot.

Mr. BOYD. Mr. Chairman. I move the adoption of the report.

Mr. WAKELEY. Mr. Chairman. It will be expected that something will be said in favor of this proposition by the committee who have reported and who recommend its adoption. In what I shall say in favor of it I shall content myself with a plain statement of the principle intended to be established by the adoption of this proposition and such arguments and reasons in support of it as I am able to bring forward. The subject addresses itself to the intelligence of men, it appeals to that sense of what is right and just. In the first place it is well to have a clear idea of what is in that proposition, what it intends to say. First what is the mischief to be remedied? Under the present system of using the elective franchise as we all know, whenever one or more officers are voted for in the same district either a majority of those voting or a plurality elect the whole number voted for. What is in that is to permit such a use of the elective franchise; such a use of the power of the ballot, entrusted to every individual, as will bring about as nearly as practicable this result, that the majority shall no longer be unable to elect a majority of the officers voted for in the election and that it shall be no longer in the power of a mere majority to elect all those officers. Under the system of government which prevails in this country we have the electing of various classes of officers. The executive to enforce the law. The judiciary to interpret the laws and various other officers to perform their functions in the state. What is in that is this, that heretofore in adopting this system every class or condition of voters, whether the majority, plurality or number less than either to elect its due proportion of the representative officers and select its due share of other officers, a share which shall bear the same proportion to the number elected as the division of voters less than a plurality bears to the whole number of voters. If nine officers are to be chosen of the same class, in the same district and at the same election then it is intended that one-third of the voters supporting the same system shall be able to elect three of these officers and in that proportion: On that principle this is enough to explain what is in that by the adoption of this proposition. How will the adoption of this proposition accomplish that result? This is I trust plainly and clearly set forth and stated in the report made by the minority of the committee, and if gentlemen of the convention have done us the honor to peruse that report it will perhaps explain more clearly than I could now do, the manner in which the adoption of this system is expected to work the proposed result. But I may state a few words perhaps without trespassing upon the time or indulgence of the committee. Under the present system of voting Mr. Chairman, each elector is required to give one vote to each of the candidates whom he supports or confirms for a given office, or to lose in part the benefit of his vote. He can give but one vote to any one candidate or person, therefore it results necessarily as a mathematical proposition that if a minority of voters distribute their votes in this manner they will be outnumbered by the majority, and thus the minority by attempting to accomplish more than they are able to, accomplish nothing; but if each individual voter, if each minority of voters, all desiring to elect the same set of candidates, were permitted to bring their whole electoral power to bear upon selecting that share which they are justly entitled to, they would effect what they undertake, but in being compelled to attempt more than they can accomplish they lose the entire benefit of the ballot. In being permitted to attempt just what they are able to accomplish they are able to make their votes effectual. If one-third of the whole number of voters are permitted each to give three votes to the candidate of their choice, they will inevitably elect him. And, sir, the principle upon which this is accomplished is the same principle illustrated in the daily transaction of human life. When an individual attempts by physical effort to overcome an obstacle altogether beyond his power or resources, all his strength is exerted in vain. When my friend the president of the convention, Gen. Strickland, or Gen. Manderson in the late war for the Union, at the head of their respective brigades, found themselves confronted by an overwhelming number of the enemy they would deem it rash and reckless to hurl their little forces upon three times their number and thus sacrifice lives uselessly and shed blood in vain in confronting a foe more than their number, but give them what they are able to do and they can strike blows for the flag and country which shall tell and which did tell in working the overthrow of the rebellion which aimed at the life of this republic. Men losing their lives in such a contest do not lose them in vain, blood shed in such an effort was not shed ruthlessly. Now sir, in using the ballot we would apply the same principle. We would not compel the minority to fritter away the whole force of their ballot, the whole effect of the electoral power, by attempting to accomplish impossibilities. We would have them measure their strength and concentrate their votes upon that number of candidates whom they would be able to elect. This, then Mr. Chairman, in few words is the method by which we expect to acomplish the result aimed at. Now sir, is this right and is it expedient? First is it the right of the elector so to use his ballot, is it right for the minority to be represented according to their principles in the legislative counsels of the country, and is it right that the minority should be able to select its due proportion of other officers? And sir, it would conduce to clearness and brevity if I confine my remarks plainly to the question of representation. This is sometimes called Mr. Chairman, minority representation. I would call it proportional representation. It is a representation of minority, but it is only a proportional representation, a representation according to the numbers of the minority as compared with the whole number of voters. Now sir, is it right that a minority of voters should be allowed to elect their representatives to the legislature, and send them to speak and act for a minority of the voters? Mr. Chairman, let me speak for one moment upon forms of government. Do not imagine that I am going to weary this committee with any dissertation upon the general principles of government, but it is necessary in the argument, that I should devote a very few moments to that general consideration. Governments are of two kinds, popular governments and monarchial or kingly governments. Popular governments are of two sorts, one the pure democratic in which all the voters assume to deliberate, to legislate and to decide. I need not say of course that this form of government has its place in the world. It took its due place in the procession of the forms of government, but from physical necessity it has passed away, it was practicable only where those comprising the government were spread over a limited area. But sir, when so represented the minority was there as well as the majority. The majority had its voice, its influence, its power, in the ultimate decisions and whatever concerned the common weal. Although this form of government has passed away yet still we have traces of it in our American institutions. Mr. Chairman, in the meetings of New England, New York, the central and most of the western states you have still an example on a small scale of a purely democratic form of government, where every voter in the limits of the town is entitled to be present at these meetings, these little legislatures for the town, is entitled to his voice, his influence, and to his vote in all affairs which concern the little commonwealth of which he is a part. You have this same form of government represented in your school district meetings, in your church meetings, in your society gatherings, where minorities have still all their rights. If a man stands solitary and alone, the sole representative of a single interest, the sole exponent of a single view of the policy which should control the town or society, although his single voice may be heard, although his single vote may be given in support of his proposition, still he is entitled to be there, to be heard and to give that vote. Sir, when the pilgrims assembled on the deck of the Mayflower and there with the broad canopy of God over them and the whole continent and wilderness before them, sat down and framed the laws and regulations which should govern the little community they were about to establish, they were democratic every man of them, fleeing from the persecution and bigotry in the old world to the freedom of the new, And every man was entitled to be heard and was heard, and sir, historians say that in that code of laws and regulations is found the germ of some of the most valuable principles which have been embodied and perpetuated in the laws of the United States. So much for a democracy. We, sir, live in a representative government where a few men legislate in the name of all. Where a few regents of the people perform their duties in order and the interest of law. It is not part of my purpose to discuss the relative merits of these two forms of government, suffice it to say that a representative government is a necessity at this day, and it would not be difficult to show that it is an improvement upon a pure and absolute democracy, but that is foreign to my purpose. Now sir, coming to the immediate question. We are about to provide for a legislature of the state of Nebraska, provide for a senate and a house of representatives, and to illustrate my ideas of what is right and what ought to be done, let me suppose what is not far from the facts. Suppose that this state will have 30,000 votes, that we shall provide for a house of representatives to consist of sixty members; when sir, 30,000 voters will elect sixty members of the house, and upon an average every 500 votes in the state will elect one of these representatives. Now, sir, if the entire state of Nebraska was one grand legislative district, and sixty members were to be chosen from the whole state, what would be a perfect system of representation? I have not the time to reason it out. Other men have done it much better, much more convincingly than I can do. But, sir, I lay down this proposition, and I will argue in reference to it that a perfect system of representation, if the whole state was one representative district, would allow every 500 men within the limits of the state who would prefer to use their electoral power for one man, and their candidate should have the power necessary to elect him, then, sir, he would be, in every sense of the term, their representative. Every man who voted for him would be directly represented by him. But, sir, that will not be done. Let me suppose what is probable to be done. That counties or legislative districts electing more than one member shall have their due quota or proportion of representatives assigned to them. For illustration. Suppose the county of Otoe has one-tenth of the population of the state and will be accorded one-tenth of the representatives; she has a population of quite, or, perhaps, exceeding one-tenth, and she will have not less than six members accorded to her. Then I carry out my illustration. Three thousand voters in the county of Otoe will be entitled to send six members to this hall. Every 500 of these voters is entitled to elect one man. That is the average proportion. Now, sir, if one thousand of those voters are in favor of electing one set of candidates, and 2,000 voters in favor of electing another set of candidates, is it right, is it just, is it democratic, that the 2,000 should elect all the representatives, and that the 1,000 should elect none? But worse than that! Suppose that there shall be three sets of candidates in the field, and one set receives, by a few votes, more than either of the others, then one-third or a little more of the whole number of votes, elects the six members, and the two-thirds are disfranchised; and there sir, is minority representation for you in its perfection. There the minority elected all your members and the majority is unrepresented. If there be three candidates in the field and each one-third of the voters would elect two members, each would be represented, and there would be proportional representation. Gentlemen, is that fair; is that just; is that right? Or is it right that either a minority, which means but a plurality, shall elect them all. Now, sir, let me put a few instances by way of practical illustration of this principle. As a general thing, voters divide according to political principle. As a general thing, they are arranged in two great political parties—sometimes in three. Now, let us suppose some cases which are not embraced in this classification of voters. I will suppose that in the county of Otoe, entitled to elect six members, with a voting population of 3,000, that there are 500 voters who have in [common] some principle which to them, is dear and valuable. I will suppose there are 500 men there known as labor reform men, who believe that the principal issue should be the issue of capital and labor! who believe that these principles, which are advocated by the political parties, are comparatively unimportant but who believe that the rights of labor should be the great object of legislation; sir, that party has an existence in this country. I suppose in some places it is strong; in others it is weak. But if there be 500 men within the limits of Otoe county who would make the issue of labor reform the supreme issue in the canvass, and say they care nothing for any other question to be mooted in the legislature; but that this is the great, paramount and supreme issue, sir, is it not right, is it not just; is it not democratic; is it not republican that those 500 men should elect one man to represent their views upon the floor of the legislature; and so another 500 men believe that there should be prohibitory legislation against the manufacture and selling of intoxicating liquors; another 500 men, drawing their inspiration from my honored friend to my left, believe in some question of great interest to them. Now, sir, although the great majority may be against that question, although there may be an overwhelming torrent of public opinion against it; yet who will stand up here and say 500 men, the number who, everywhere else are entitled to elect one representative, believe a man to be elected for that purpose and vote for their man, should not have the right to elect him, and let their views be expressed upon the floor of the legislature? So if free schools had not already been established in this land beyond all danger of overthrow; if we were back twenty or thirty years before free schools were established by a fundamental law of the states; when education was beyond the reach of the poor man, when, from mere penury and want his children were growing up about him in ignorance, was it not the right of every set of men, amounting to the quota which entitled them to one representative, to elect a special champion of that great and paramount cause? And so unnumbered illustrations might be put; but I forbear. I have given enough to illustrate the principle.

Now, sir, what I have said pertains to representative officers. It may be said that in respect to other officers the principle has no application. It may be said that the judges of the land are elected not to represent the views of the constituents but to administrate the law as it is. That is true. They are not elected to represent the political views, of any few of the men who choose them. But they are elected because the men who vote for them believe they are fit and suitable men for the office; and if there is a difference of opinion among the voters on that question; if a bare majority of the voters say A. B. and C. are the most suitable men for judges, and the minority amounting to nearly one-half, say, no, neither of those men are capable, neither of those men are fitted for the office, but three other men, two other men, one other man is, in our judgment, suitable, is the best man in the state or in the district to hold the office; then; sir, applying the same principle, should not the choice of the minority be respected to the extent of their proportion of the whole number of votes? And while the principle is the same; the occasion of it is different. Let me allude to one principle which is not embodied in the report. The able gentleman from Otoe county, a few days since, in a casual remark upon the accidental question, took occasion to say he believed in some representation in the legislature in either branch of the legislature; from the state at large, that a proportion of the senators and representatives should be elected without reference to locality, and he stated, in better language than I can employ, the reason for which. Mr. Chairman, early in the session, I had something individually to do with the resolution that went to this committee, and I will only undertake to say that they established a most excellent element to incorporate in the system of legislation.

Sir, we all know—every man has had occasion to know, that in every state some of the very best men, some of the men most fit, most capable in every respect to represent the people are kept out of the legislature because the people of the particular district in which they live are opposed to them politically. I have seen this sir, and if men were taken from the state at large—were selected for their peculiar fitness for the positions, there would be a reformation in political matters. If the principle of minority representation, or rather proportional representation should be carried out to the extent proposed by this committee, so that each portion of the state should have its proportional representation, much good would result. I would be glad to have this new state of Nebraska to be the first state in the union to adopt this legislative reform. Mr. Chairman, it is sometimes said by those who think lightly of this measure that minorities are now represented. It is worth while to consider that for a moment. Upon what principle am I represented by a man whom I opposed with all my power,—by a man who does not represent my principles, but comes into the legislature to do all he can in opposition to those principles? On what principle is the minority represented by a member who is opposed to every principle which the minority believes in? That, sir, is not the kind of representation that can stand the scrutiny of the people. Now Mr. Chairman, that I may not weary the committee, I will leave this question, which I have so imperfectly discussed. A few words as to another question. Is it expedient that there should be minority representation? Is it right that the minority should be represented, for if it is then we need not inquire into the expediency. If it is right, it is expedient. But looking beyond the right I say, is it expedient to the state that minorities should be represented? I believe it is better for the state, better for the public that there should be a minority representation in every representative body. The history of the whole world shows that the possession of unrestricted power, whether it be in kings or legislative bodies, is dangerous—that it leads to abuse and corruption, and that the minority is a check upon the majority. It tends to prevent extreme measures. It needs no argument to show that the presence of a minority ready to oppose the extreme measures of the majority and ready to expose the tricks by means of which they propose to accomplish their ends, is of the highest good to the people of the state. A minority may be able to point out errors of detail which may have been made. Again, Mr. Chairman, how often it is that majorities differ on questions of detail, then the minority holds the balance of power. How often it is that a particular law is passed, or a particular measure is adopted, not by the representatives of the people, but by a mere majority of those who represent but one-half of the people; and when you take a legislative body elected on the plurality system and then reflect that measures may be carried out by a majority even of these men, it makes the matter ten fold worse. Mr. Chairman, look at the history of reforms in governments all over the world, and what does it show? It shows that all great reforms have been inaugurated by minorities, and finally carried through by the impetus given them by a small minority. Why is it so? It is because there is a strong conservative principle among men which causes them to cling to old institutions, belonging to England; look at the evils the poor people suffer, and tell me if anything to benefit them was ever carried through by the majority. No sir, these things are always started by a small number, who feel that these principles are true. They keep working away and the time comes when their principles are adopted by the majority. How was it in reference to the homestead laws? When the wife and children, whatever misfortune, whatever reverses, might come upon the head of the family, should have a shelter and a refuge. I remember and my friend on the left (Mr. Estabrook) remembers and was an active member at that time, when the constitution framed by the state of Wisconsin was voted down mainly because it provided that the homestead should be exempted from the debts of the family. I remember how one of the best members on that floor laid down his commission and went home saying that that one reason among others that Wisconsin had. That was presented originally by a minority, and today it has the sanction of all who have the framing of laws, and I doubt if today you find one man who would say it should be stricken from that constitution or statute book Mr. Chairman, I know of no book. Mr. Chairman, I know of no more striking illustration of what may be accomplished by the simple entering in of this idea into the legislative bodies of the country than has been exhibited in the result of the overthrowing of slavery in the U. S. In the long struggle every member here bore his part and I say I refer to this only as a sign of what may be thus accomplished. I speak of it only as an illustration, and as such I hope it will be received. Many of us remember when a very small party represented it in the house and Hale and Seward in the senate. But we could see how it suddenly increased until it culminated in a national triumph and in the events of war resulted in its overthrow ultimately. True, Mr. Chairman, that I was not of the number. I shall perhaps live as I have lived and die in the belief that this great national evil——————the good time might have disappeared without the strife that brought our institutions to the brink of destruction. Others think otherwise and regard this as the only possible way.

Mr. Chairman, thanking the committee for the patience with which they have listened to me and making one other observation before concluding.

For the ideas which I have advanced I make no claim of originality, the form of expression only is my own. They have been advanced far more eloquently and advocated by able thinkers and profound reasoners on government in other countries as well as this. In England, France and Switzerland, and by men of remarkable and comprehensive statesmanship. They have been adopted and ratified by the people of the great northwest in Illinois; and sir, here in Nebraska the people will approve and ratify them, and sir, I think we should do so here. I know that this convention will rise against all party consideration or local advantage in laying a fundamental structure that shall stand when you and I have passed away. Principles that will remain when there shall not be left one stone upon another of this building we occupy. In this question party considerations have no place. Parties pass away but principles are permanent and immutable.

Mr. MAJORS. Mr. Chairman. I apprehend it is the pleasure of every member of this committee to advocate the right when they find it and we are not here to advocate our pet views. I have listened with interest to the argument of the gentleman from Douglas (Mr. Wakeley) and must acknowledge it has some force, yet it appears to me that I can see some principles in the working of this minority representation that might not work right. In presenting a case he has arranged numbers that have worked well in the minority representation, by arranging the number of representatives at nine and number of voters at three thousand. I will arrange another set of figures and see how it will turn out in that direction. To illustrate we have four representatives in one district to be voted for at the same time. There are six hundred voters in the minority and nine hundred in the majority party. The six hundred by casting their votes for only two men would give them in the aggregate twelve hundred votes for each of the two men. If the majority would cast their votes for three men, and suppose they come to an equal number the result would be twelve hundred votes each, and in that case the minority would tie, but it is hardly to be supposed that the majority would be prepared for this, while on the other hand it would naturally follow that the minority would resort to this advantage and in that case they would secure the same representation as the nine hundred.

So far as I understand the principle of our government its representation is, as clearly stated by the honorable gentleman from Douglas, by the masses of the people, rather than to come up, as they did in the primitive form of democracy, submit their power to their chosen delegates which they send here. I know that there the minority have the same opportunity to be represented as in the old democracy form of government and thev certainlv cannot claim anything further, they must succumb to the will of the majority. Then I can see how this minority representation might work hardship. I just submit these views that we may consider together what would be the result of the minority representation. I do not hold that it is necessary at all that we should adopt this system of voting or this system of representation in order to have that. I hold that there are gentlemen in every party, where they conceive a principle be right, have the moral manhood to stand by that principle and defend it as has been done in cases passed into history and has finally triumphed by pressing the truth they were in possession of upon the consideration of the masses. I do not hold that it is necessary in order to purify legislative bodies that this system should be inaugurated, nor to send up representatives from the minority party at home. Representatives are sent from their districts to represent the people of this state, and will be held to account for their action as representatives by their constituents at home. I have reason to believe there are men capable of wire-working and systemizing so as to bring about results deleterious to the common people of the country, they may do it for a time, but the people will rise up and put down such unfaithful representatives and send out honest men from their body. Under our present form I think this has been frequently done, and I think as a people in this state we will be represented upon the old basis of representation where the majority shall rule, probably as correctly and successfully as we will to inaugurate this new system..

Mr. ESTABROOK. Mr. Chairman. I never in all my life have bestowed as much thought on this subject as I have tonight. It is an entirely new theme to me, and knowing that the matter had been presented in Illinois, I made up my mind to vote for a like proposition here to submit to the people. I am not going now to take a position for or against this idea, I favor it in one respect, it is new. I am glad to see my friend so enthusiastic to bestow that richest of all boons to the free man, the right of suffrage, even to the minority. But sir, let me see a little how this matter might work. We will suppose that in a particular district the democrats have 900 voters and the republicans 700, that there are three candidates and each voter has three votes to cast. Well, the democrats will be tolerably apt to cast their three votes for each of the three candidates, that will be 900 each for the democratic nominees, but the republicans come up and know they have but 700 votes for two giving them 1050 votes each and electing the two candidates and the majority but one. Is not that possible? If not I would like to hear the argument to meet it. If we are going to adopt what we call the minority system that shall give to the minority the right to hold the majority in their places. I do not believe I would exactly be in favor of it. Now then let me throw out this other thought. Opposed to this scheme in my own mind stands the theory of single districts, each district sending out to the Legislature one individual to be voted for by a given constituency. That is to say, you have a single district for Senator, and the proposition of those who favor this minority representation that in that district it is not proposed to apply to the Senate, it has not a universal application, and if applied to representation can only be applied to the lower house. While you make a single district in the Senate, you have a district which shall send three to the lower house and to those who shall be elected from that representative district apply the minority rule. Let us see whether by the single district system it would not be possible that a majority should not have representation. We will suppose for instance that Sarpy, Cass and Saunders counties are one senatorial district, Cass and Saunders are republican but Sarpy is decidedly democratic. Now then, you make each one of those counties a single representative district. Cass goes along about her business, Saunders does the same, but Sarpy sends our friend Grenell here to represent them; does not the minority get the representatives here? This feature of single districts commends itself to my regard. In the first place it is uniform in the lower house as in the upper, in the next place it brings the representative here? This feature of face to face. Where you make a district a single district you are apt to make it of such dimensions as that the particular interests of the districts, and all the interests of the district should be presented in the person of the individual you send to represent you in either branch. While if you have one district and send three individuals to represent you, the stronger portion being in Cass, it strikes me that Cass would get them all if they sought to do it. If the single district system can be adopted, it seems to me every portion of the state of Nebraska can be so divided as that one man shall become the embodiment of the constituency he represents. So far as that is concerned I have to acknowledge that the single district system recommends itself to my regard. I only throw out these remarks now as the objection occurred to me.

Mr. STRICKLAND. Mr. Chairman. I did not intend to say anything on this subject. I have listened with a great deal of pleasure to my friend Judge Wakeley as I always do, but I failed to hear any convincing argument that changes my mind on this subject. The whole drift of his argument is the representation of party. A party is in the majority in this country because it advocates good men and good measures, or in the minority because it advocates improper men and measures. He tells you that a minority have in times past away, along down through time, inaugurated all these great impossibilities. That is not a very proper word to use but a better one than my friend used. But did they ever in England or any where else accomplish anything until they became majorities? How did they become majorities? Why by impressing themselves on the people, and the people reflect back by electing men to represent them, and to represent this truth. If Judge Wakeley's argument was right and carried its point by reason, it ought to be apportioned, and let us start a lot more majorities. He says "How am I represented, when the man who represents me is one I am opposed to?" You are represented by the man whom the people thought was the better man than the one you thought should be returned. He, voting for a bad man, or a bad principle, is not represented and should not be. Now, I apprehend it is just as necessary, and always will be, in this country, to have majorities and minorities, as it is to have parties—one party a check upon the other. But his principle would leave a legislature all scattered around indifferent to the interests of anybody, but a majority is responsible to the people for all its acts. He speaks of the minority exposing the majority. Why is there anything done in this country, gentlemen, in legislative bodies, by night? Through the Press, the gentlemen who advocate this question scatter their documents boldly and eloquently before the people. It has been the custom of this country from the start, from Whig and Tory, where the great idea of a great principle was struck when our forefathers struck for liberty; they struck in opposition to a number that was equal to them in numbers. And they were right; and notwithstanding that, and they had used reason and argument, and had supplicated to the throne of grace—the king of England, and they resolved to maintain their rights from that time; right from the election of the very first president; and during his time, why, you remember that but one vote in the Continental Congress, saved Washington's head to us and his name and fame for ever. It kept the power and the ascendency and when a party became rotten and corrupt, and the intelligent people, reflecting the mind and wishes of the majority, desired a change, that change was accomplished by the action of majorities. What becomes of this new majority, when it becomes corrupt, fails to do its duty, in representing the interests of the people who put them in the position?

Down they go to a minority again. I think it is just as necessary to have these changes as that we should have hot and cold air, and winds to purify the atmosphere—just as necessary to have majorities and minorities. In the particular case my friend speaks of, here are 900 against 500 of one way of thinking, and 400 left. Why, how simple! This gets back to the fundamental law of democratic government, my friend argued so eloquently—the 500 representing one set of principles, perhaps one idea, and embody it in the one man, vote for the one man; what shall the 400 do? Are they not represented? Why, let them show by argument and reason, that they are right, and the 500 are wrong. It is one of the grandest principles in this government that majorities shall rule, govern, control and legislate. And they exercise that power and will be held strictly responsible for the exercise of it. How little it takes to change a great state like Pennsylvania! How New York has shuffled to and fro. For 25 years the state government changes as much as once in four years. Why it is right. Now, my friend alluded to the labor reform party which might claim representation. Why, if he would go into all the schisms and isms, he would have the labor reform, woman's rights, the Chinamen, the Hindoo and the Indian represented—one who believes in a God and one who don't. Why, what an idea for a great man like him to argue that every freckle upon the body politic is to be represented here. There is no argument in that. all men electors, are free and equal. Equal in their rights, equal in representation, and at the polls, each is a sovereign in himself to exercise the elective franchise and go to the polls and vote for one man in the aggregate, and his views are represented.

Now, why this wonderful change in our state? In our own county, only two years ago, we sent a fine gentleman who was a fine, clever democrat, and he came as the representative of the majority of the county while the popular majority is republican. Who are oppressed by this system, and who are not? If we send representatives as we did last winter, and they perform their duties honorably, and again we send these men, I pray God we will; and I trust the county will endorse us. Why, mix this question up, in this wise. Look at these gentlemen appearing here, and when in our county it is said there is a majority of 500 in politics against them. They sent these men here because they wanted their energy and ability. This question of minority representation is as complicated as a steam engine, and as little understood by the common people, but yet, like a steam engine if a little thing is out of place the whole thing goes wrong. As my friend Estabrook would say, he is opposed to the system because he don't understand it. Well, I am in the same fix; but I do understand the old system and am satisfied.

Mr. MAXWELL. Mr. Chairman. I move that the committee now rise, report progress and ask leave to sit again.

The motion was agreed to.

Mr. STEVENSON. Mr. President. The committee of the whole have had under consideration the report of the committee on electoral and representative reform, report progress, and ask leave to sit again.

Adjournment.

Mr. WEAVER. I move we now adjourn.

Leave of Absence.

Mr.LEY. I ask leave of absence until Thursday.

Leave granted.

Adjournment Again.

Mr. GRAY. I move we adjourn until 8 o'clock to morrow morning.

Mr. MANDERSON. I move to amend by saying 9 o'clock.

The amendment was agreed to.

So the convention (at 9 o'clock and 45 minutes) adjourned.

TWENTY-NINTH DAY.

Friday, July 28, 1871.

The convention was called to order at nine o'clock by the president.

Prayer.

Prayer was offered by the chaplain to the convention, Rev. L. B. Fifield, as follows:

Great, Wise and Holy Lord and King; many gifts and mercies we seek in Thee. May this people find law and light in Thee alone. May the rule that is here made be so strong and so just that every one shall be satisfied and no one suffer. Here may learning, ambition and all wealth be consecrated on the altar of truth to the service of God, now and ever. Amen.

Reading of the Journal.

The journal of the last day's proceedings was read and approved.

Communications and Petitions

Mr. ESTABROOK. Mr. President. I have a petition.

The following is the petition:

To the Constitutional Convention of Nebraska.

We, the undersigned, respectfully ask that the right of suffrage be conferred upon women, upon the same conditions and to the same extent as upon men.

Signed, M. Mills, John DeLang and twenty-four others.

The PRESIDENT. The petition will be referred to the committee on rights of suffrage.

Reports of Standing Committee.

Mr. WEAVER. Mr President. I have a report of the committee on counties, and ask that it be read by title.

The PRESIDENT. The report will be read twice by title and 150 copies ordered printed. The secretary will read the report of the standing committee on rights of suffrage, by title.

The secretary read the report by title.

The PRESIDENT. The report will be referred to the committee of the whole.

Mr. WOOLWORTH. Mr. President. The select committee which has had under consideration the subject of a board to take charge of Public Lands and Buildings are ready to report this morning. When this report is received, the Executive Bill will be ready to be disposed of in the convention. I desire that this article may be considered finally this morning. It will be utterly impossible for me to be here next week, probably any part of it, and I desire before I go away that the consideration of this article will be completed. I earnestly hope the Executive article will come up this morning.

Mr. McCANN. Mr. President. The consideration of this report has been put off again and again on account of gentlemen's absence. I look forward to the time that I may not be present here, if this convention is to continue until the holidays, and I, too, would like to have those reports in which I am personally interested. Yet I will cheerfully give way for the taking up of this article, with the understanding that the report of the committee on Revenue and Finance will be taken up next.

The PRESIDENT. The question is on taking up the Executive article in convention.

Mr. SCOFIELD. Mr. President. Before that motion is put I would like to submit the report from the select committee to which was referred the subject of Land Commissioner and Superintendent of Public Buildings.

The secretary read the report as follows:

The select committee to which was referred the subject of land commissioner and superintendent of public lands and buildings have had the several propositions referred to them under consideration and recommend that the Executive article be amended by inserting in the third line of the first section, after the words "attorney general," the words "commissioner of Public lands and buildings."

That a new section be inserted in said article to be numbered "20" (the numbers of the sections following being changed) the following:

The commissioner of public lands and buildings, the secretary of state, treasurer and attorney general shall form a board which shall have joint supervision and control of all the grounds and lands of the state, the state prison, asylum and other institutions thereof, except those for educational purposes and shall perform such duties and be subject to such rules and regulations as may be prescribed by law.

That the 23rd section of said article be amended by adding the words "The salaries of the commissioners of public lands and buildings shall be————

G. B. SCOFIELD, Chairman.

By consent of the committee we submit the following report:

"A land commissioner shall be elected who shall have control and sale of all lands belonging to the state as provided by the legislature.

A commissioner of public buildings shall be elected who shall have control of all public buildings and grounds belonging thereto and shall let all new contracts for new state buildings, additions, repairs and supplies as shall be prescribed by law.

(Signed) J. N. CASSELL.
W. H. CURTIS.

Mr. WOOLWORTH. Mr. President. I move the convention take up the executive article.

Mr. MYERS. Mr. President. I hope the convention will adhere to its rules and let this come up in the afternoon in its order.

The PRESIDENT. The question is on the motion of the gentleman from Douglas (Mr. Woolworth) to take up the executive article in convention.

The motion was not agreed to.

Mr. MAXWELL. Mr. President. I move the report of the select committee just read be referred to the committee of the whole.

The motion was agreed to.

Mr. BALLARD. Mr. President. I move we go into committee of the whole on the report of the committee on state, county and municipal indebtedness.

Mr. McCANN. Mr. President. I now insist on my motion—I move to amend the motion of the gentleman from Washington (Mr. Ballard) by substituting the report of the committee on revenue and finance.

Mr. WOOLWORTH. Mr. President. I hope that amendment will prevail, as the gentleman (Mr. McCann) gave way for my motion only.

The PRESIDENT. Gentlemen, this amendment to the executive bill has just been referred to the committee of the whole.

Mr. MYERS. Mr. President. I move that the committee of the whole be discharged from the further consideration of this amendment on the question of the executive.

The motion was agreed to.

Mr. BALLARD. Mr. President. I will withdraw my motion.

Mr. ESTABROOK. I think we can clean up everything in regard to the executive and school article.

Mr. McCANN. I withdraw my motion.

Mr. GRAY. Mr. Chairman. I move that we consider now the report of the executive committee in connection with the report of the special committee.

The motion was agreed to.

The secretary read the report as follows:

The select committee to which was referred the subject of land commissioner and superintendent of public buildings have had the several propositions referred to them beg leave to report that they have had the same under consideration and recommend that the executive article be amended by inserting in the third line of the 1st section after the words "attorney general" the words "commissioner of public lands and buildings."

That a new section be inserted in said article to be numbered "20" (the numbers of the section following being changed) the following:

The commissioner of public lands and buildings, the secretary of state, treasurer, and the attorney-general, shall form a board which shall have general supervision and control of all the buildings, grounds and lands of the state ,the state prison, asylum, and all other institutions thereof, except those for educational purposes, and shall perform such duties and be subject to such rules and regulations as may be prescribed by law.

That the 23rd section of said article be amended by adding the words "the salaries of the commissioners of public lands and buildings shall be—

G. B. SCOFIELD, Chairman.

By consent of the committee we submit the following report:

A land commissioner shall be elected who shall have control and sale of all lands belonging to the state as provided for by the legislature.

A commisioner of public buildings shall be elected who shall have control of all public buildings and grounds belonging thereto and shall let all contracts for new state buildings, additions, repairs and supplies as shall be prescribed by law.

(Signed) J. N. CASSELL.
W. H. CURTIS.

Mr. WOOLWORTH. Mr. Chairman. Perhaps it is desirable to state to the convention that these amendments which are proposed by the report of the special committee refer to the report of the executive committee. It is proposed in the first place to amend the first section of the executive article by inserting, in the third line, after the word "general" the words "commissioner of public lands and buildings." The convention will observe that when this amendment is made, the eighth line now applicable to the six officers of the executive department, that those officers shall perform such duties as may be prescribed by law, will also be applicable to the commissioners of public lands and buildings, as well as the other executive officers; and also the twenty-sixth section providing for bonds, will apply to that officer as well as to the others. It is proper to state, sir, that another proposition is brought in here providing for two instead of one officer. That is to say—a commissioner of public lands and superintendent of public buildings, to elect two officers to have charge of these matters instead of one. That is a matter which I suppose the convention will now have to determine. In order to bring the matter before the convention I move to amend the first section striking out the word "and" before the words "attorney general" in the third line, and inserting after the words "attorney general" the words "and commissioner of public lands and buildings."

Mr. GRIGGS. Mr. Chairman. It appears to me as if the duties of state land commissioner would be all that one person ought to perform, and I would like to hear the ideas of the chairman of the executive committee upon that question. As I understand this amendment it only provides for one commissioner who shall be commissioner of state lands and also of public buildings.

Mr. WOOLWORTH. Mr. Chairman. So far as I am concerned I have no particular choice in the matter. It seemed, when the matter was before the committee of the whole the other day, to me, at least, as if the idea was to create as few officers as necessary, and the object of making one instead of two officers was merely for the purpose of economy. I apprehend sir, that for a year to come the commissioner of public lands will have a great deal to do. Let me state somewhat in detail what his duties, in my view, should be. And I took the pains, when home the last time, to advise upon this subject with Mr. Davis, who is the commissioner of lands of the Union Pacific railroad company, and as such officer has sold, within the past year, between one and two million of acres of land. He was the gentleman who organized the land department of that company, and has carried it to a point of very great perfection. I thought, of all the gentlemen within my acquaintance, he was the one best fitted to apply to for information upon the subject. His idea was that there should be one man charged with this business; and that during the first year of the occupancy of his office he would be obliged to labor very hard. First in gathering up the land, or in finding out what lands there are and what lands there ought to be; and in the next place making his plats, preparing his books of reccounts, and other records for the purpose of keeping all accounts of the sales and other distribution of these lands. To attend to this matter, we talked over, for the first year would be a very onerous task. But he said after that work was once done a single man would be able to carry on the business of the office without being employed but a portion of the time. This was his idea. So much, sir, for that office.

Now, as to the duties of an officer who shall be called a superintendent of public buildings. What will he have to do? He will have charge of all these state public buildings scattered throughout the state. Not to be sure a personal charge of the ash pans and the other duties that would naturally devolve upon a janitor; but the general care of the buildings. See to the insurance, and that there was proper protection from fires and other such like matters. Also to the contracts and the work of enlarging or of erecting the public buildings. The question is are these duties incompatible? If they are not the next is whether they can be discharged by one man. Now, that they are not incompatible, if a man has the time; if a man keeping but few offices is able to fill them; that I apprehend there is no sort of question; but whether a man, for a year or so, will be able to attend to all these duties, is indeed, I think, a very doubtful question. But, sir, in the discharge of these duties, which Mr. Davis told me a land commissioner would have to do, he would necessarily, whether he were vested with these two offices or charged with the duties of one alone, be obliged to have clerks and draftsmen; draftsmen to make these plots, clerks to work up the catalogue, the lists of the different kinds of lands, which the state owns, and get them in order. Then, beyond that, general attention to the securities which the state if it has not in fact, at any rate, ought to have, and all the sales of the public lands. In the discharge of these duties, I say, whether one or two offices be created, the land commissioner will be obliged to have some assistance of a clerical nature.

If the gentleman asks for my own personal opinion upon this subject my idea would be to create one office —I am not strenuous—and then leave it to the legislature, under one of the sections of the executive article, the 24th section, to provide for such temporary agents, agents appointed for a temporary purpose, to discharge any duties that might seem to be of temporary urgency and necessity. That is my idea. I have no personal wishes in the matter.

Mr. CASSELL. Did I understand that the gentleman from Gage offered an amendment?

Mr. GRIGGS. I do not.

Mr. CASSELL. I would move to amend by inserting after the word "attorney" the words "land commissioner and commissioner of public buildings."

Mr. WOOLWORTH. As the section now stands, without amendment either from the special committee or the gentleman from Lancaster, there will be but the governor, lieutenant governor, secretary of state, auditor of public accounts, treasurer, superintendent of public instruction, and attorney general, as the officers of the executive department; if the amendment proposed shall obtain, then there will be, besides these officers, the office of commissioner of public lands; if the amendment of the gentleman from Lancaster should obtain, there will be, besides the officers of the executive department as it now stands, both a commissioner of public lands and a commissioner of public buildings.

Mr. MYERS. If this proposes to create an additional office to that of land commissioner, I desire a definite expression of opinion. I call for the ayes and nays on the adoption of the amendment.

Mr. ESTABROOK. It is understood that these two commissioners are to constitute a part of the board of commissioners, or are they, according to this amendment, if adopted, to be separate and independent officers?

Mr. WOOLWORTH. They would be independent.

Mr. HASCALL. As I understand all we do now is create the office, and in our future action we decide whether he shall act separately or in connection with other members of the board.

Mr. CASSELL. Mr. Chairman. I had a conversation this morning with the auditor of the state, and he says that the duties which devolve upon the land commissioner will be as much as he and a clerk or two can perform; and there is a very great necessity for a commissioner of public buildings, and he would have a great deal of work to perform. The idea of the gentleman that this is going to be more expensive to the state is, in my judgment, very erroneous. It is well known by the gentlemen of this convention, that, at the present time, there are no less than from twelve to twenty different individuals employed, and under pay from the state to perform just half the duties, the gentleman from Douglas proposes to have a land commissioner. In my opinion, while this will create a little expense, the state will save a good deal more by having this conducted by one man, and he under the control of the legislature, than to pay so many different men. It has been said that many thousand dollars might have been saved to the state in the last two years, if such a commissioner had been in existence; and if the affairs had been conducted that way instead of promiscuously, as they have been. The state ought to create the position. The grounds around this capitol need ornamenting. Already over $2,000 have been expended over them now, and what does it amount to? Some gentlemen have said $50 would have done it and another said it could have been done for $20. Now, why all this expenditure? The reason of it is simply because these matters have been conducted too loosely, and the reason of that is—there has been no one whose duty it was, especially, to attend to these matters We should appoint some man, with a salary; and if we did we would save thousands of dollars to the state. There are many things about this building that require attention, the lightning rods, etc.; and we ought to have a commissioner to attend to these matters. I think if there had been a commissioner appointed during the last two years there would have been enough saved to pay his salary for the next ten years. My idea is that this commissioner should have the power to make contracts for the public buildings, buy supplies, coal, etc. The coal, for instance, should be bought in the summer, when coal is cheap, freights low. Several hundred dollars could be saved in this way each year; but we find that coal has been bought in the winter, when it is the highest, and freights, too, are higher. I think Mr. President, the duties wil be too onerous for one man to perform, and I am in favor of two commissioners.

The PRESIDENT. The question is upon the amendment offered by the gentleman from Lancaster.

Mr. TOWLE. Mr. President. I would like to say a word, if I may be allowed. ("Leave" "Leave.")

I hope the amendment of the gentleman from Lancaster will not prevail, as it is loading down the constitution. I think a man of first-class ability can perform all the duties of these offices, with a corps of good clerks under him. There will be scarcely any building done by these officers. I undertake to say that there will not be much duty for this commissioner to do in a short time. Then we find we have an officer elected with a salary of perhaps $1,000 or $1,800, and nothing for him to do, except, perhaps to look after the trees, put up lightning rods, etc. It is necessary for some man of ability and character to take hold of our land affairs. I believe, sir, that the two can be combined in one and then there will not be half enough for him to do, except the first year, which will be occupied in bringing order out of chaos.

("Question," "question.")

The secretary read the amendment as follows: "After the word "general" insert, "land commissioner and commissioner of public buildings."

The yeas and nays being demanded, the secretary proceeded to call the roll.

The President announced the result,—ayes 19, nays 28—as follows:

AYES.

Ballard,
Cassell,
Curtis,
Estabrook,
Granger,
Griggs,
Hinman,
Kenaston,
Kilburn,
Kirkpatrick,
McCann,
Majors,
Manderson,
Maxwell,
Moore,
Newsom,
Parchin,
Philpott,
Reynolds—19.

NAYS.

Abbott,
Boyd,
Campbell,
Eaton,
Gibbs,
Gray,
Hascall,
Lake,
Ley,
Lyon.
Mason,
Myers,

Neligh,
Price,
Scofield,
Shaff,
Sprague,
Stevenson,
Thummel,
Tisdel,
Towle,
Vifquain,
Wakeley,
Wilson,
Woolworth,—28.

ABSENT OR NOT VOTING.

Grenell,
Parker,
Robinson,
Speice,
Mr. President.—5.

So the amendment was not agreed to.

The PRESIDENT. The question is upon the motion to strike out the word "land" in the 3rd line, and insert "public buildings".

Mr. WOOLWORTH. Mr. President. The select committee proposed, in the first amendment, one office, and to have the person filling the office discharge such duties as shall be prescribed by law, just the same as any other state officer. Section 20 follows to the effect that this officer, together with the secretary of state, treasurer, and the attorney general shall form a board which shall have joint control of the lands and public buildings of the state, except such as relates to education, and shall perform such duties as shall be prescribed by law. That is to say, that he is a special officer who shall have special duties to perform.

The secretary read the amendment offered by the gentleman from Saunders(Mr. Sprague) as follows:

> Strike out from the third line the words, "public buildings and," and insert in the third line after the word "state" the words "who shall also be a commissioner of public buildings."

The PRESIDENT. The question is on the amendment offered by the gentleman from Saunders (Mr. Sprague.)

The convention divided and the amendment was not agreed to.

Mr. ROBINSON. Mr. President. I have an amendment which I desire to offer, it applies to the first, second and third sections. I have written out the three sections embodying the amendment which I will send up.

The secretary read the amendment as follows:

> Sec. 1. The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor of public accounts, treasurer, superintendent of public instruction, attorney general and commissioner of public lands and buildings, who shall each hold his office for the term of two years from the first day of January next after his election and until his successor is elected and qualified. Provided, however, that the first election of said officers shall be holden on the—day of——187— and the officers then elected shall each hold his office for the term of one year and until his successor is elected and qualified. They shall, except the lieutenant governor, reside at the seat of government during their term of office and keep the public records, books and papers there and shall perform such duties as may be prescribed by law.
>
> Sec. 2. The treasurer shall be ineligible to said office of treasurer for two years next after the end of the time for which he was elected.
>
> ELECTION.
>
> Sec. 3. The officers of the executive department shall after the first election hereinbefore provided for be elected at the general election for members of the house of representatives to be holden in the year 1872, and every two years thereafter at such times and places as may be prescribed by law.

Mr. PHILPOTT. Mr. President. I offer an amendment to the amendment. It will leave the first section as it is except adding the words "as herein provided," and amend the third section so as to read "the officers of the executive department shall be elected for a term of one year at the general election for members of the house of representatives to be held in the year 1871, and thereafter the term of office shall be two years, and said officers shall be elected at such time and place as may be prescribed by law."

Mr. ROBINSON. I will state, Mr. President, I have looked over this section carefully and I am very certain my amendment covers just what I meant it to, and I don't know that this amendment does. The only change I intended to make was fixing the time of the election.

Mr. TOWLE. Mr. President. I think that matter of time should be left to the committee on schedule.

Mr. ABBOTT. Mr. President. If the amendment to the amendment was not seconded, I move to amend the amendment by striking out the second section.

The ayes and nays were demanded.

The secretary called the roll and the President announced the result. Ayes, 25, nays, 24, as follows:

YEAS.

Abbott,
Boyd,
Cassell,
Estabrook,
Gibbs,
Granger,
Gray,
Griggs,
Hascall,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Ley,
Lyon,
McCann,
Majors,
Maxwell,
Neligh,
Philpott,
Reynolds,
Scofield,
Thummel,
Wakeley,
Mr. President.—25.

NAYS.

Ballard,
Campbell,
Curtis,
Eaton,
Hinman,
Mason,
Manderson,
Moore,
Myers,
Newsom,
Parchin,
Price,
Robinson,
Shaff ,
Sprague,
Stevenson,
Stewart,
Thomas,
Tisdel,
Towle,
Vifquain,
Weaver,
Wilson,
Woolworth,—24.

ABSENT AND NOT VOTNG.

Grenell,
Parker,
Spiece.

Mr. PHILPOTT. Mr. President. I withdraw m amendment for the purpose of considering the amendment of my colleague (Mr. Robinson.)

Mr. GRAY. Mr. President. I move to amend the first section of the amendment by inserting the words "but when that day shall fall on Sunday the term of office shall commence on the following day."

Mr. ROBINSON. I do not see what possible objection there can be to the term of office commencing on Sunday, there is nothing wicked about it that I know of. It is not necessary they shall be sworn in on the day the term commences.

Mr. LAKE. Mr. President. I agree with the gentleman from Lancaster (Mr. Robinson) that it is entirely useless to put in this clause. There is a provision that all these officers shall hold their office until their successors are qualified, and they would not be qualified if the year commenced on Sunday until the following day.

Mr. GRAY. I withdraw the amendment.

Mr. THOMAS. Mr. President. I understand the object of this section is to have the election of our state officers in the same year as the Presidential election. I hope the amendment will not prevail, for I think it would be much better that the state officers should not be elected in that year.

The PRESIDENT. The question is on the amendment of the gentleman from Lancaster (Mr. Robinson).

The ayes and nays were demanded.

The secretary called the roll, and the President announced the result, ayes 25, nays, 22, as follows:

YEAS.

Abbott,
Ballard,
Cassell,
Curtis,
Granger,
Gray,
Griggs,
Hascall,
Kenaston,
Kilburn,
Kirkpatrick,
McCann,
Majors,
Manderson,
Moore,
Myers,
Neligh,
Philpott,
Price,
Robinson,
Stewart,
Tisdel,
Thummel,
Weaver,
Wilson,—25

NAYS.

Boyd,
Campbell,
Eaton,
Estabrook,
Gibbs,
Hinman,
Lake,
Ley,
Lyon,
Mason,
Maxwell,
Newsom,
Parchin,
Robinson,
Shaff
Sprague,
Stevenson,
Thomas,
Towle,
Vifquain,
Wakeley,
Woolworth,—22.

ABSENT OR NOT VOTING.

Grenell,
Parker,
Scofield,
Spiece,
Mr. President.

The PRESIDENT. The secretary will read section four.

Mr. HINMAN. I rise to a point of order. I do not know that these sections have passed as amended.

The PRESIDENT. The gentleman is right. The question now is upon the adoption of the first section, as amended; and will then recur on section two and three.

The section was adopted.

The PRESIDENT. The question is on the adoption of section three.

Mr. HINMAN. I wish to re-instate section two, with this addition. After the word "The" add "officers of the executive department." and strike out the words "he was," and insert "they were."

Mr. NEWSOM. As a substitute, Mr. Chairman, to the gentleman's motion I offer the following—"The treasurer shall be ineligible for the office of treasurer for two years after he shall have served two consecutive terms."

Mr. STEVENSON. I move to amend by inserting "the balance of the executive officers."

The President. That would hardly be in order at this moment.

Mr. HINMAN. The object is simply to destroy the use of the patronage of these officers for securing their re-election. I believe the routine of office is better, if you cannot change the features of the state for two years, by at least having another complexion. These men learn too much in two years.

Mr. ROBINSON. If I was not in favor of any provision of this kind I should certainly vote for the amendment. Now the meaning of the amendment, as I would construe it, is, that he must serve two terms; and suppose, in order to make himself eligible for the third term, he should resign? It seems to me the amendment is deficient.

Mr. ABBOTT. If the mover of this resolution will withdraw it, and offer one making all the executive officers ineligible, I will vote for it, but I see no reason for doing it in the case of one man and not all.

The yeas and nays were demanded.

The secretary called the roll, and the president announced the result, yeas, 16; nays, 31, as follows:

YEAS.

Eaton,
Hascall,
Kenaston,
Kirkpatrick,
Lake,
Mason,
Manderson,
Maxwell,
Moore,
Newsom,
Sprague,
Stevenson,
Thomas,
Towle,
Wakeley,
Woolworth,—16.

NAYS.

Abbott,
Ballard,
Boyd,
Campbell,
Cassell,
Curtis,
Estabrook,
Gibbs,
Granger,
Gray,
Griggs,
Hinman,
Kilburn,
Ley,
Lyon,
McCann,
Majors,
Myers,
Neligh,
Parchin,
Philpott,
Price,
Reynolds,
Robinson,
Shaff,
Stewart,
Thummel,
Tisdel,
Vifquain,
Weaver,
Wilson,—31.

ABSENT OR NOT VOTING.

Grenell,
Parker,
Scofield,
Speice,
Mr. President,—5.

So the substitute was not agreed to.

The PRESIDENT. The question now recurs on the proposition of the gentleman from Lincoln.

Mr. McCANN. I offer a substitute —"the officers named in this section shall be ineligible to their respective offices for two years next ensuing, after having served two consecutive terms."

Mr. PHILPOTT. Mr. President. I am opposed to the motion, for several reasons——

The PRESIDENT. The ayes and nays are called and no debate is in order, without general consent.

Mr. BALLARD. Mr. President. I wish to offer an amendment.

The PRESIDENT. Has he leave?

("No," "no," "Leave, leave.")

Leave not granted.

The PRESIDENT. Pro tempore. The question is upon the substitute.

"The officers named in this section shall be ineligible to their respective offices for two years next ensuing after having served two consecutive terms."

The ayes and nays being demanded the secretary proceeded to call the roll.

Mr. PHILPOTT. (When his name was called) Mr. President. I rise to explain my vote, I will not vote to make a man ineligible to office without good cause. For that reason, I vote no.

The President announced the result, ayes, 22; nays, 26, as follows:

AYES.

Boyd,
Campbell,
Curtis,
Granger,
Griggs,
Hascall,
Hinman,
Kirkpatrick,
Lake,
McCann,
Mason,
Maxwell,
Moore,
Newsom,
Price,
Sprague,
Stevenson,
Thummel,
Thomas,
Wakeley,
Wilson,
Woolworth,—22.

NAYS.

Abbott,
Ballard,
Cassell,
Eaton,
Estabrook,
Gibbs,
Gray,
Kenaston,
Ley,
Lyon,
Majors,
Manderson,
Myers,
Neligh,
Parchin,
Philpott,
Reynolds,
Robinson,
Scofield,
Shaff,
Stewart,
Tisdel,
Towle,
Vifquain,
Weaver,—26.

ABSENT OR NOT VOTING.

Grenell,
Parker,
Speice,
Mr. President,—4.

So the amendment was not agreed to.

The PRESIDENT Pro tempore. The question now recurs upon the proposition of the gentleman from Lincoln (Mr. Hinman.)

The secretary reads:

"All officers of the executive department shall be ineligible for office for two years next after the term of office for which they were elected."

The ayes and nays being demanded, the secretary proceeded to call the roll.

The President announced the result,—ayes, 15; nays, 33,—as follows:

AYES.

Hinman,
Ley,
Mason,
Moore,
Neligh,
Newsom,
Parchin,
Price,
Shaff,
Sprague,
Stevenson,
Stewart,
Thomas,
Vifquain,
Weaver,—15.

NAYS.

Abbott,
Ballard,
Boyd,
Campbell,
Cassell,
Curtis,
Eaton,
Estabrook,
Gibbs,
Granger,
Gray,
Griggs,
Hascall,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Lyon,
McCann,
Majors,
Manderson,
Maxwell,
Myers,
Philpott,
Reynolds,
Robinson,
Scofield,
Thummel,
Tisdel,
Towle,
Wakeley,
Wilson,
Woolworth,—33.

ABSENT OR NOT VOTING.

Grenell,
Parker,
Speice,
Mr. President,—4.

So the amendment was not agreed to.

Mr. MANDERSON. Mr. President. I move to insert in Sec. 2, the following:

"The treasurer shall be ineligible to the office of treasurer for two terms next after the two years for which he was elected."

Mr. MYERS. Mr. President. I move to amend the section by inserting "The treasurer shall be ineligible to any office under the sun."

Mr. HASCALL. I move to amend by adding "or under the moon," also.

Mr. MANDERSON. Mr. President. It seems to me this is a very proper rule to apply to the disbursing officer of the state. I would not apply it to all officers, but the man who handles the money of the state should be frequently relieved. The disbursing officers of the United States army are frequently relieved, and it is found to be a wholesome regulation. It is customary to have army disbursing officers turn over all they have to account for and make proper accounting not only to the officer who relieves them, but to the government. One officer is sent to relieve another at some post and he is sent to some other and it is necessary he should turn over and account for all the property and money that has come into his possession, and it seems to me is a good rule.

Mr. ROBINSON. Mr. President. I am opposed to this amendment. It may render a man ineligible for life; at any rate ten years may intervene between the terms that he holds.

Mr. MANDERSON. To relieve it of that objection I would insert the word "consecutive."

Point of Order.

Mr. MYERS. Mr. President. This is the same question on which the convention has just passed and therefore it is not in order.

Mr. KIRKPATRICK. Mr. President. It strikes me sir, that the proposition is clearly out of order, but if it is held in order I hope it will not be adopted.

Mr. GRIGGS. Mr. President. Neither of the gentlemen who have last spoken upon this subject have raised the point of order. I now rise to a point of order. I hold that the amendment is not in order. I will read from Cushing's Manual, Section 7, on amendments.

"If an amendment is proposed by inserting or adding a paragraph or words, and the amendment is rejected, it cannot be moved again to insert the same words or a part of them; but it may be moved to insert the same words with others, or a part of the same words with others, provided the coherence really make them different propositions."

Now I understand that the gentleman's amendment is just the same as that offered by the gentleman from Otoe (Mr. Mason) which the convention voted down, and under this rule it is out of order.

Mr. MANDERSON. Mr. President. I will explain——

Mr. MYERS. I call the gentleman to order.

The PRESIDENT. If the gentleman desires to speak to the question of order, he is in order.

Mr. MANDERSON. I do, Mr. President. This proposition differs from the one offered by the gentleman from Otoe (Mr. Mason) in that it requires that he shall be ineligible for two terms, the change of words makes it a different proposition.

The PRESIDENT. The proposition is in order.

Ineligibility of Treasurer.

The PRESIDENT. The question is on the adoption of the proposition. The ayes and nays are demanded, the secretary will call the roll.

The vote was taken, and the result was announced—ayes, 27; nays 21—as follows:

AYES.

Boyd,
Campbell,
Curtis,
Eaton,

Hascall,
Hinman,
Ley,
McCann,

Mason,
Manderson,
Maxwell,
Moore,
Newsom,
Price,
Robinson,
Shaff,
Sprague,
Stevenson,
Stewart,
Thummel,
Thomas,
Towle,
Vifquain,
Wakeley,
Weaver,
Wilson,
Woolworth,—27.

NAYS.

Abbott,
Ballard,
Cassell,
Estabrook,
Gibbs,
Granger,
Gray,
Griggs,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Lyon,
Majors,
Myers,
Neligh,
Parchin,
Philpott,
Reynolds,
Scofield,
Tisdel,—21.

ABSENT OR NOT VOTING.

Grenell,
Parker,
Speice,
Mr. President,—4.

So the proposition was adopted.

Mr. BALLARD.. Mr. President. I wish to offer this amendment.

"The treasurer and all other state officers shall be ineligible to hold office after they shall have served a lifetime in such office."

I offer this for the reason that I want to get on the record.

Mr. STEVENSON. I move that that twelve inches square of the record be devoted to the gentleman from Washington (Mr. Ballard.)

The PRESIDENT. This is all out of order. The question is on the adoption of the section.

The section was adopted.

The secretary read the next section as follows:

Sec. 4. The returns of every election for the above named officers shall be sealed up and transmitted, by the returning officers, to the secretary of state, directed to "The Speaker of the house of Representatives, who shall, immediately after the organization of the house, and before proceeding to other business, open and publish the same in the presence of a majority of each house of the legislature, who shall, for that purpose, assemble in the hall of of the house of representatives. The person having the highest number of votes for either of said offices shall be declared duly elected; but if two or more have an equal, and the highest, number of votes, the legislature shall, by joint ballot, choose one of said persons for said office. Contested elections for all of said offices shall be determined by both houses of the legislature, by joint ballot, in such manner as may be prescribed by law.

The section was adopted.

The secretary read the next section as follows:

Sec. 5. No person shall be eligible to the office of governor or lieutenant governor who shall not have attained the age of twenty-five years, and been for two years next preceding his election, a citizen of the United States and of this state. Neither the governor, lieutenant governor, auditor of public accounts, secretary of state, superintendent of public instruction nor attorney general shall be eligible to any other office during the period for which he shall have been elected.

Mr. HASCALL. I move to amend by inserting "Commissioner of Public Lands and Buildings," after the word "general."

The motion was agreed to.

Mr. MOORE. Mr. President. I move to strike out the word "twenty-five" in second line and insert "thirty."

The motion was not agreed to.

Mr. PRICE. Mr. President. It seems to me the last part of this section should be amended. I think it should be stricken out.

Mr. WOOLWORTH. Mr. President. I wish to say a few words with regard to these amendments, and also with regard to the general business of making amendments to the report. We have spent an hour on the second section. All these matters were gone over in committee of the whole and finally the article was brought to perfection. Of course it is perfectly right and perfectly proper that matters of principle, matters involving the question, for instance, that came up on the first section, whether the state election should be brought around so as to come at the same time as a presidential election, a very important matter. Of course it is perfectly proper to propose these other amendments, what I wish to say is, these liberal amendments proposed will end just as the second section ended, by coming back substantially where we were before. I merely throw out these suggestions for the purpose of saving time. I am opposed to the amendment of the gentleman from Jefferson (Mr. Price). If a man is elected to a state office, if he will take all the pains he will have to take in order to get elected to a state office, go to his convention, get nominated, go through all the expense and trouble of an election before the people, and then, after putting the people, and his party friends to all that expense and trouble concludes not to qualify, I think he has shown by that course of conduct he is just the sort of man who ought to be debarred from holding public office for that period of years. I do not propose in this convention to follow through all the amendments that may be proposed one by one, and show their desirability or whether they are not desirable. So far as I thought it proper I did follow these amendments through, when I thought they ought to be made I said so; when I thought they ought not to be made I said so.

Mr. ROBINSON. I offer the following substitute for section five:

"Any elector shall be eligible to any office provided for by this constitution, but neither of the officers named in this article shall be eligible to any other office during the period for which he shall have been elected."

I move its adoption.

Mr. KIRKPATRICK. Mr. President. There is certainly no conflict in the substitute offered by the gentleman and anything which has been adopted by this convention.

Mr. HASCALL. Mr. President. I see we have not passed upon this section of eligibility, that having been adopted in the committee of the whole and not by the convention. I withdraw my objection.

The substitute was lost.

Mr. PRICE. I withdraw my amendment.

The section, as amended, was adopted.

The secretary read the next section as follows:

Sec. 6. The supreme executive power shall be vested in the governor, who shall take care that the laws be faithfully executed.

The sixth section was adopted.

The secretary read the next section as follows:

Sec. 7. The governor shall, at the commencement of each session, and at the close of his term of office, give to the legislature information, by message, of the condition of the state, and shall recommend such measures as he shall deem expedient. He shall account to the legislature, and accompany his message with a statement of all monies received and paid out by him from any funds subject to his order, with vouchers, and at the commencement of each regular session, present estimates of the amount of money required to be raised by taxation for all purposes.

Mr. **ROBINSON.** There was an amendment made in the second line of this section in the committee of the whole, adding the words "and whenever the legislature may require."

The seventh section was adopted as amended.

The secretary read the next section as follows:

Sec. 8. The governor may, on extraordinary occasions, convene the legislature by proclamation, stating therein the purposes for which they are convened; and the legislature shall enter upon no business except that for which they were called together.

The eighth section was adopted.

The secretary read the next section as follows:

Sec. 9 In case of a disagreement between the two houses with respect to the time of adjournment, the governor may, on the same being certified to him by the house first moving the adjournment, adjourn the legislature to such time as he thinks proper, not beyond the first day of the next regular session.

Mr. HASCALL. I move to add "but no general session of the legislature shall be so adjourned by the governor until twenty days after the commencement."

The yeas and nays were demanded.

The secretary called the roll, and the president announced the result, yeas, 9; nays, 38,—as follows:

YEAS.

Estabrook,
Hascall,
Hinman,
Kenaston,
Kirkpatrick,
Lyon,
Myers,
Neligh,
Price,—9.

NAYS.

Ballard,
Boyd,
Campbell,
Cassell,
Curtis,
Eaton,
Gibbs,
Granger,
Gray,
Griggs,
Kilburn,
Lake,
Ley,
McCann,
Majors,
Mason,
Manderson,
Maxwell,
Moore,
Newsom,
Parchin,
Philpott,
Reynolds,
Robinson,
Scofield,
Shaff,
Sprague,
Stevenson,
Stewart,
Thummel,
Thomas,
Tisdel,
Towle,
Vifquain,
Wakeley,
Weaver,
Wilson,
Woolworth,—38.

ABSENT AND NOT VOTING.

Abbott,
Grenell,
Parker,
Speice,

So the amendment was not agreed to.

Mr. WAKELEY. I move an amendment to strike out the words: "The house first moving the adjournment," and insert "either house." I do not remember that this matter was considered in the committee of the whole maturely. It does not occur to me that there is any good reason for requiring this certificate to come from the house first adjourning. It appears to me right that either house have the right to call the attention of the governor to it; and call upon him to adjourn the house. It seems to me of some consequence.

Mr. HASCALL. This power is broad enough, and the gentleman's proposition will make it worse. I shall oppose it.

The amendment was lost.

The ninth section was adopted.

The secretary read the next section as follows:

Sec. 10. The governor shall nominate and by and with the advice and consent of the senate, (a majority of all the senators elected concurring, by yeas and nays) appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for; and no such officer shall be appointed or elected by the legislature.

The tenth section was adopted.

The secretary read the next section as follows:

Sec. 11. In case of a vacancy, during the recess of the senate, in any office which is not elective, the governor shall make a temporary appointment until the next meeting of the senate, when he shall nominate some person to fill such office; and any person so nominated who is confirmed by the senate (a majority of all the senators elected concurring, by yeas and nays) shall hold his office during the remainder of the term, and until his successor shall be appointed and qualified. No person, after being rejected by the senate, shall be again nominated for the same office at the same session, unless at the request of the senate, or be appointed to the same office during the recess of the legislature.

The eleventh section was adopted.

The secretary read the next section as follows:

Sec. 12. The governor shall have power to remove any officer whom he may appoint, in case of incompetency, neglect of duty, or malfeasance in office; and he may declare his office vacant, and fill the same as herein provided in other cases of vacancy.

The twelfth section was adopted.

The secretary read the next section as follows:

Sec. 13. The governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offences except treason and impeachment, upon such conditions and with restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law, relative to the manner of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the legislature at its next meeting, when the legislature may either pardon or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the reprieve, commutation or pardon. In cases of conviction, upon impeachment, the legislature may remit so much of the sentence as shall disqualify the convicted person from holding office.

The thirteenth section was adopted.

The secretary read the next section as follows:

Sec. 14. The governor shall be the commander-in-chief of the military and naval forces of the state (except when they shall be called into the service of the United States) and may call out the same to execute the laws, suppress insurrection, and repel invasion.

The fourteenth section was adopted.

The secretary read the next section as follows:

Sec. 15. The executive officers named in this article, and the judges of the supreme and district courts shall be liable to impeachment for any misdemeanor in office.

The fifteenth section was adopted.

The secretary read the next section as follows:

Sec. 16. Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it, with his objections, to the house in which it shall have originated, which house shall enter the objections at large upon its journal, and proceed to re-consider the bill. If, then, two-thirds of the members elected agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be re-considered; and if approved by two-thirds of the members elected to that house, it shall become a law notwithstanding the objections of the governor. But in all such cases, the vote of each house shall be determined by yeas and nays, to be entered on the journal. Any bill which shall not be returned by the governor within five days (Sunday excepted) after it shall have been presented to him, shall become a law in like manner as if he had signed it, unless the legislature shall by their adjournment, prevent its return; in which case it shall be filed, with objections, in the office of the secretary of state, within five days after such adjournment, or become a law.

Section sixteen was adopted.

The secretary read the next section as follows:

Sec. 17. In case of the death, conviction or impeachment to the senate and notice thereof to the accused, failure to qualify, resignation, absence from the state, or other disability of the governor, the powers, duties and emoluments of the office for the residue of the term, or until the disability shall be removed, shall devolve upon the lieutenant-governor.

Section seventeen was adopted.

The secretary read the next section, as follows:

Sec. 18. The lieutenant-governor shall be president of the senate, and shall vote only when the senate is equally divided. The senate shall choose a president pro tempore, to preside in case of the absence or impeachment of the lieutenant governor, or when he shall hold the office of governor.

Section eighteen was adopted.

The secretary read the next section, as follows:

Sec. 19. If there be no lieutenant-governor, or if the lieutenant-governor, shall for any of the causes specified in Sec. 17 of this article, become incapable of performing the duties of the office the president of the senate shall act as governor until the vacancy is filled, or the disability removed; and if the president of the senate, for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house of representatives.

Section nineteen was adopted.

Mr. WOOLWORTH. Mr. President. In pursuance of the report of the special committee, which was adopted this morning, I move to insert a section at this point to be number 20.

The secretary read the section, as follows:

Sec. 20. The commissioner of public lands and buildings, the secretary of state, treasurer and the attorney general, shall form a board which shall have general supervision and control of all the buildings, grounds, and lands of the state; the states prison, asylum and all other institutions thereof, except those for educational purposes, and shall perform such duties and be subject to such rules and regulations as may be prescribed by law.

Mr. KIRKPATRICK. Mr. President. I would like to ask if there is no provision for pay for these officers? If not, I think it would be well to insert it.

Mr. WOOLWORTH. No, sir, it is not necessary to do so. The salaries of the state officers are provided in the constitution.

The PRESIDENT. The question is upon the adoption of the proposition of the gentleman from Douglas (Mr. Woolworth.)

The section was adopted.

The secretary read the next section as follows:

Sec. 21. If the office of auditor of public accounts, treasurer, secretary of state, attorney general or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be prescribed by law. An account shall be kept by the officers of the executive department, and of all the public institutions of the state, of all moneys received or disbursed by them, severally, from all sources, and for every service performed, and a semi-annual report thereof be made to the governor, under oath; and any officer who makes a false report shall be guilty of perjury, and punished accordingly.

Mr. WOOLWORTH. Mr. President. I move to amend by inserting, after the words "attorney general," the words "commissioner of public buildings."

The amendment was agreed to.

The PRESIDENT. The question is upon the adoption of the section as amended.

Section twenty-one was adopted.

The secretary read the next section as follows:

Sec. 22. The officers of the executive department, and of all the public institutions of the state, shall at least 10 days preceding each regular session of the legislature, severally report to the governor, who shall transmit such reports to the legislature, together with the reports of the judges of the supreme court of defects in the constitution and laws; and the governor or either house of the legislature may at any time require information, in writing, under oath, from the officers of the executive department, and all officers and managers of state institutions, upon any subject relating to the condition, management and expenses of their respective offices.

The twenty-second section was adopted.

The secretary read the next section as follows:

Sec. 23. There shall be a seal of state, which shall be called the "Great seal of the state of Nebraska," which shall be kept by the secretary of state, and used by him, officially, as directed by law.

Section twenty-three was adopted.

The secretary read the next section as follows:

Sec. 24. The officers named in this section shall receive for their services a salary, and they shall not, after the expiration of the terms of those in office at the adoption of this constitution, receive to their own use any fees, costs, perquisites of office or other compensation. And all fees that may hereafter be payable by law for any service performed by any officer provided for in this article of the constitution, shall be paid in advance into the state treasury.

The salary of the governor shall be $4,000. The salary of the secretary of state, of the auditor of public accounts and of superintendent of public instruction shall each be $2,000. The salary of treasurer and attorney general shall each be $2,500. The lieutenant-governor shall receive twice the compensation of a senator Provided, that at the expiration of five years from the adoption of the constitution and every five years thereafter, the legislature may, by general law, re-adjust the said salaries, but the salaries of the officers named in this section shall not be increased or diminished during their official terms.

Mr. WEAVER. Mr. President. I move to strike out the words "4,000" and insert "3,000."

Mr. HASCALL. I move to strike out "4,000" and insert "3,500."

The PRESIDENT. The question is upon the motion to strike out "4,000" and insert "3,500."

Mr. HASCALL. Mr. President. I call for a division of the question.

The PRESIDENT. The question is upon the motion to strike out "4,000."

The ayes and nays being demanded the secretary proceeded to call the roll.

The President announced the result—ayes, 36; nays, 13—as follows:

AYES.

Ballard,
Campbell,
Curtis,
Eaton,
Gibbs,
Gray,
Griggs,
Hascall.
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Ley,
Lyon,
McCann,
Majors,
Maxwell,
Moore,
Myers,
Neligh,
Newsom,
Parchin,
Philpott,
Price,
Reynolds,
Robinson,
Shaff,
Sprague,
Stevenson,
Stewart,
Thummel,
Thomas,
Tisdel,
Towle,
Wakeley,
Weaver,—36.

NAYS.

Abbott,
Boyd,
Cassell,
Estabrook,
Granger,
Hinman,
Mason,
Manderson,
Scofield,
Vifquain,
Wilson
Woolworth,
Mr. President—13.

ABSENT AND NOT VOTING.

Grenell,
Parker,
Speice.

So the motion to strike out was agreed to.

Adjournment.

Mr. WILSON. Mr. President. I move to adjourn now.

The convention divided and the motion to adjourn was not agreed to.

Salaries.

Mr. PHILPOTT. Mr. President. I move to amend by striking out "$3.500" and inserting "$3,000."

The PRESIDENT. The question will be on the largest sum first. Gentlemen, the question is on inserting $3,500.

The ayes and nays are demanded —secretary call the roll.

The vote was taken and the result was announced—ayes, 23; nays, 24 —as follows.

AYES.

Abbott,
Ballard,
Boyd,
Curtis,
Gibbs,
Granger,
Griggs,
Hascall,
Hinman,
McCann,
Majors,
Mason,
Manderson,
Moore,
Robinson,
Scofield,
Thummel,
Tisdel,
Towle,
Vifquain,
Wilson,
Woolworth,—23.

NAYS.

Campbell,
Cassell,
Eaton,
Estabrook,
Gray,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Lyon,
Maxwell,
Myers,
Neligh,
Parchin,
Philpott,
Price,
Reynolds,
Shaff,
Sprague,
Stevenson,
Stewart,
Thomas,
Wakeley,
Weaver,—24.

ABSENT AND NOT VOTING.

Grenell,
Newsom,
Parker,
Speice,
Mr. President.—5.

So the amendment was not agreed to.

The PRESIDENT. The question is on inserting $3,000.

The ayes and nays are demanded —secretary, call the roll.

The vote was taken and the result was announced—ayes, 24; nays, 23 —as follows:

AYES.

Ballard,
Curtis,
Gibbs,
Griggs,
Hascall,
Lake,
Lyon,
Majors,
Moore,
Myers
Parchin,
Philpott,
Reynolds,
Robinson,
Shaff,
Sprague,
Stevenson,
Stewart,
Thummel,
Thomas,
Tisdel,
Wakeley,
Weaver,
Mr. President,—24.

NAYS.

Abbott,
Boyd,
Campbell,
Cassell,
Eaton,
Estabrook,
Granger,
Gray,
Hinman,
Kenaston,
Kirkpatrick,
Ley,
McCann,
Mason,
Manderson,
Maxwell,
Neligh,
Price,
Scofield,
Towle,
Vifquain,
Wilson,
Woolworth—23.

ABSENT AND NOT VOTING.

Grenell,
Kilburn,
Newsom,
Parker,
Speice,—5.

Mr. KILBURN. Mr. President. I desire to vote on this question.

The PRESIDENT. Were you in the room?

Mr. KILBURN. No, sir.

The PRESIDENT. You cannot vote unless by unanimous consent.

(I object.)

Adjournment Again.

Mr. LEY. I move we adjourn.

The motion was agreed to. So the convention (at twelve o'clock and thirty-five minutes) adjourned.

Afternoon Session.

The convention met at two o'clock and was called to order by the president.

The PRESIDENT. The question occurs, gentlemen, upon the adoption of section twenty four.

Mr. BOYD. Mr. President. I have an amendment I wish to offer, in reference to fixing the salary of the commissioner of public lands and buildings. Insert after the word "senator," in the tenth line, as follows: "The salary of the commissioner of public lands and buildings shall be $2,500."

Mr. ROBINSON. I would suggest it would be well to insert that along with the auditor, treasurer, and attorney general, so as to avoid repetition.

Mr. BOYD. I accept the amendment.

Mr. MAXWELL. I wish to make a motion before we pass further—to strike out "$3,000" and insert "$2,500" for the salary of governor.

The PRESIDENT. I am clearly of opinion that the proper way to do that would be to reconsider.

Mr. ROBINSON. There is a motion pending before the house.

Mr. MAJORS. I move to amend the motion and say that "the salaries of the secretary of state, auditor and superintendent of public instruction, shall each be $2,500."

Mr. McCANN. How are those of us who are in favor of low salaries to get at that? This convention, I take it, sir, has unmistakably expressed an opinion today in favor of low salaries. They have, as plainly as can be expressed, said that the salary of governor of the state of Nebraska, shall be $3,000, and, from the nature of the motion made by the gentleman from Cass, a few moments since, I take it there is a disposition to reduce the governor's salary. Now, would it not be well, Mr. Chairman, for the purpose of saving time, to reduce all these salaries in a batch? If the salary of the secretary of state, auditor and treasurer be $2,500, the governor's salary should be more than that; and I hope the amendment of my friend from Nemaha (Mr. Majors) will not prevail. I propose, at the proper time, to make a motion to reduce all these salaries to a sum far less than recommended in the section.

The PRESIDENT. The question is on the amendment of the gentleman from Nemaha (Mr. Majors.)

The yeas and nays were demanded.

Mr. BOYD. Mr. President. Before the vote is taken I wish to say that my amendment does not change the salary of any officer. It only provides for a salary for the commissioner of public lands. Mr. Majors' amendment proposes to increase the salary of the secretary of state, auditor, and superintendent of public instruction.

Mr. MAJORS. My object, Mr. President, is to make the salaries of the secretary of state, auditor, and superintendent of public instruction equal where there is no more labor attached. I believe in paying a uniform price for the same amount of labor. I hope gentlemen will look upon this question from a business point of view, and give it that consideration it merits at their hands.

Mr. MAXWELL. I trust we will make some distinction. The attorney general is not prevented from practicing in the courts, and the position of attorney general is often a good recommendation to the man occupying the position, if he is industrious enough to endeavor to work up a practice. I am in favor of paying respectable salaries, but I want it fixed now. The legislatures have a tendency to give larger salaries. Now, this, in a new state, where the people are only just commencing, many settlers having come in lately —within the last six months. Half of the people in this state are living in temporary habitations, mud houses, and log huts, and have all they can do to get along. It is proposed to pay salaries which already amount to $100,000, for state officers. In addition to that expense there is that of the penitentiary, the insane asylum, and other expenses, that would swell up to an aggregate of $160,000, or a little over three mills on the dollar. Now who could be prevented from accepting these positions if we pay reasonable salaries? I do not think any one will refuse the positions. If money was the entire object, many of the members of this convention would not attend here today. Many of our number here can earn from $20 to $25 per day. I have never known a legislator to refuse to serve because of the low salary given. There is a provision already adopted providing for the increase of salaries; and if the people see these salaries are too low they can increase them. If you get the salaries up too high you cannot get them down. We are coming to specie payment fast, and the living in the next ten years will, in all probability, be much lower than for the past ten years.

Now, why should we at this time, when money is so exceedingly close that many business men are hard pressed to meet their engagements give such high salaries? I am opposed to the proposition.

Mr. MAJORS. Mr. President. We fixed the salary of the attorney general the other day. I am not seeking to advance that salary at all, but as the salary of the treasurer and attorney general is set down here for $2,500 each. I cannot see why other officers, whose duties are as much, if not more, should not receive as much. I was going to remark, Mr. President that the gentleman from Cass (Mr, Maxwell), in his extreme love for economy and low salaries, has referred to gentlemen on this floor serving the state as members of this convention, at a much lower remuneration per day, than they could make at home. I think there is no analogy between the two cases. We are now about to establish the salaries of men who are going to enter upon duties for the state. It seems to me that when we give them salaries we should give them such as they are justly entitled to. It is generally considered that a man has the opportunity of sitting as a member of a constitutional convention, perhaps only once in a life time, and the honors conferred are to be taken into consideration, somewhat; but we are now fixing the salaries of men who are to support their families upon their pay. I desire that they should have a competence to live upon, and if it requires $2,500 a year to support himself and family here, I don't think we should require our officers to come here and work for less. I think that $2,500 is not too high.

Mr. McCANN. Mr. President. I would like to ask the gentleman from Nemaha, (Mr. Majors), for whose opinion I have great respect, one question.

Mr. MAJORS. Go on, sir.

Mr. McCANN. I believe the gentleman (Mr. Majors) voted this morning to reduce the salary of the governor to $3,000, did you not?

Mr. MAJORS. I voted to strike out $4,000. Then I voted for $3,500, then for $3000. I voted for the highest figure each time.

Mr. McCANN. My question is this. If the governor is required to move his family here; support the position of governor; entertain not only his friends, but the friends of the state also, and can live upon $3,000, cannot the other state officers, of whom these things are not expected—who have none of the public duties which we require of our governor—live upon less than $3,000? I think that should be taken into consideration.

Mr. CASSELL. Mr. President. While I agree with the gentleman from Nemaha (Mr. Majors) that it requires more to live upon here, than in any other place, perhaps, in the state, still I say that the position which the officer holds should be taken into consideration. It is required that the governor should spend $3,000 or $4,000 per year in order to accommodate those who come here as guests of the state, but I do not think it is necessary that the other officers should have such a salary. Now the superintendent of public instruction is, or should be, a professional teacher, and this should be taken into consideration when you fix his salary. I don't think there is a teacher in this state who receives over $1,200 or $1,500 to-day, and if he comes here at a salary of $2,000 he does much better than he is now doing. It is generally considered, I think, that the duties of the position, are not so hard as those of a teacher in some public institution. While I have been in favor of as high salaries, or perhaps higher than any other gentleman upon this floor, I may say I am not in favor of a high salary here. I doubt if there are half a dozen attorneys on this floor whose net proceeds are more than$2000 per year, and the leading lawyers of the state are here. I think there are few lawyers whose net proceeds amount to more than $2000 or $2500 per annum. Now if this be the case, taking into consideration the fact that the governor's salary has been reduced so low, I think that we should not pay these officers so much. I am decidedly opposed to paying these officers $2,500 each.

Mr. ROBINSON. Mr. President. Like the gentleman from Nemaha

(Mr. Majors) I voted to strike out the "$4,000" and voted for "$3,500" and when I found we could not get that, I voted for "$3,000." Now I think that $3,000 under the present circumstances, is a very good salary, it is a fair salary, at least. In the committee, these salaries were voted in rotation. Some of the members of the committee fixed the salaries of the state officers generally, at $2,000, but when they came to the treasurer, thought we ought to fix his salary at $2,500, although there was no very good reason given for this discrepancy. I think that $2,500 for these officers and $3,000 for the governor is a very fair figure.

Mr. KIRKPATRICK. Mr. President. The gentleman from Lancaster (Mr.. Robinson) said there was no very good reason given by the committee why there was a discrepancy between the salary of the treasurer, and that of the other officers. I believe, sir, that the auditor should receive the same pay as the treasurer, and therefore, I think that the treasurer ought not to receive a larger compensation than the auditor, but, sir, I am opposed to increasing the salary of any of these officers but in favor of reducing them down to $2,000. I do think, sir, there ought to be a distinction made between the office requiring mere clerical work from that of the executive, or judicial.

The PRESIDENT. The question is on the amendment of the gentleman from Nemaha (Mr. Majors).

The ayes and nays are demanded—secretary call the roll.

The vote was taken and the result announced—ayes, 11, nays, 35—as follows.

AYES.

Campbell,
Eaton,
Estabrook,
Granger,
Lake,
Majors,
Manderson,
Moore,
Robinson,
Tisdel,
Towle,—11.

NAYS.

Abbott,
Ballard,
Boyd,
Cassell,
Curtis,
Gibbs,
Gray,
Griggs,
Hascall,
Hinman,
Kenaston,
Kilburn,
Kirkpatrick,
Ley,
Lyon,
McCann,
Maxwell,
Myers,
Neligh,
Parchin,
Philpott,
Price,
Reynolds,
Scofield,
Shaff,
Sprague,
Stevenson,
Stewart,
Thummel,
Thomas,
Vifquain,
Wakeley,
Weaver,
Wilson,
Woolworth,—35.

ABSENT AND NOT VOTING.

Grenell,
Mason,
Newsom,
Parker,
Speicer,
Mr. President,—6.

Mr. PHILPOTT. Mr. President. I have an amendment I wish to offer now.

The secretary read the amendment as follows:

The salaries of the secretary of state, of the auditor of public accounts, of superintendent of public instruction, of treasurer, commissioner of lands and public buildings and attorney general shall be $2,000. The lieutenant-governor shall receive twice the compensation of a senator.

Mr. PHILPOTT. Mr. President. My object is to reduce some of the salaries. I have a great desire for my part that this constitution should be carried by the people, and inasmuch as we are about to provide that these salaries may be raised by the legislature, I do think we should fix the amount to pay.

Mr. STEVENSON. Mr. President. I have been in favor of the salaries just as the committee reported them, and I am now in favor of them. I am not in favor of reducing the salary of the attorney general below what the committee reported it, $2,000.

Mr. PHILPOTT. I will amend, with the consent of the convention, so as to make the salary of the attorney general at $2,000.

Mr. BOYD. Mr. President. I move the previous question.

The PRESIDENT. Ten gentleman up—Gentlemen, the question is shall the main question be now put?

The motion was agreed to.

The PRESIDENT. The question is on the amendment offered by the gentleman from Lancaster (Mr. Philpott.).

The ayes and nays are demanded —secretary call the roll.

The vote was taken and the result was announced, ayes, 35; nays, 11—as follows:

AYES.

Boyd,
Cassell,
Curtis,
Eaton,
Estabrook,
Gibbs,
Griggs,
Hascall,
Hinman,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Ley,
Lyon,
McCann,
Majors,
Maxwell,
Moore,
Myers,
Neligh,
Parchin,
Philpott,
Price,
Reynolds,
Shaff,
Sprague,
Stevenson,
Thomas,
Tisdel
Towle,
Wakeley,
Weaver,
Wilson,
Woolworth —35

NAYS.

Abbott,
Ballard,
Campbell,
Granger,
Gray,
Manderson,
Robinson,
Scofield,
Stewart,
Thummel,
Vifquain,—11.

ABSENT AND NOT VOTING.

Grenell,
Mason,
Newsom,
Parker,
Speice,
Mr. President,—6.

So the amendment was agreed to.

Mr. BOYD. Mr. President. I withdraw my amendment.

Mr. MAXWELL. Mr. President. I move the adoption of the section as amended.

The motion was agreed to.

The President read the next section, as follows:

Definition and Oath of Office.

Sec. 25. An office is a public position created by the constitution or law, continuing during the pleasure of the appointing power, or for a fixed time, with a successor elected or appointed. An employment is an agency, for a temporary purpose, which ceases when that purpose is accomplished.

Section twenty-five was adopted.

The president read the next section as follows:

Sec. 26. All civil officers except members of the legislature and such inferior officers as may be by law exempted shall before they enter on the duties of their respective offices take and subscribe the following oath or affirmation.

I do solemnly swear (or affirm as the case may be) that I will support the constitution of the United States and the state of Nebraska, and that I will faithfully and impartially discharge the duties of the office of— ———according to the best of my ability and that I have not directly or indirectly paid or contributed anything or made any promise in the nature of a bribe to directly or indirectly influence any vote at the election at which I was chosen to fill said office and have not accepted nor will I accept nor receive directly or indirectly any money or other valuable thing from any corporation or person for any official act.

Any officer refusing to take the oath herein prescribed shall forfeit his office and after conviction of having sworn falsely to or violating his oath shall forfeit his said office and shall be disqualified from holding any office of trust or profit in the state.

No other oath, declaration or test shall be required as a qualification.

Mr. GRIGGS. Mr. President. I move to strike out after the word "ability" in the oath down to the word "no" in the ninth line of the section.

The ayes and nays were demanded.

The secretary called the roll and the president announced the result; yeas, 12; nays, 32, as follows:

AYES.

Abbott,
Estabrook,
Gibbs,
Griggs,
Lake,
Myers,
Neligh,
Reynolds,
Stevenson,
Stewart,
Thummel,
Wakeley,—12.

NAYS.

Ballard,
Boyd,
Campbell,
Cassell,
Curtis,
Eaton,
Granger,
Gray,
Hascall,
Hinman,
Kenaston,
Kilburn,
Kirkpatrick,
Ley,
Lyon,
McCann,
Majors,
Manderson,
Maxwell,
Moore,
Philpott,
Robinson,
Scofield,
Shaff,
Sprague,
Thomas,
Tisdel,
Towle,
Vifquain,
Weaver,
Wilson,
Woolworth—32.

ABSENT AND NOT VOTING.

Grenell,
Mason,
Newsom,
Parchin,
Parker,
Price,
Speice,
Mr. President,—8.

The PRESIDENT. The question is upon the adoption of the section.

Section twenty-six was adopted.

The President read the next section, as follows:

Bonds.

Sec. 27. The officers mentioned in this article shall give bond in double the amount of money which may come into their hands, with such provisions as to sureties, and the approval thereof, and for the increase of the penalty of such bonds, as may be prescribed by law.

Section twenty-seven was adopted.

Mr. ROBINSON. Mr. President. I move to amend section one, filling the blank by inserting "the first Tuesday in September."

Mr. HASCALL. Mr. President. I offer an amendment to the proposition just offered by the gentleman from Lancaster. I move to insert "the Tuesday succeeding the first Monday in November next."

Mr. ROBINSON. I will accept that amendment.

Mr. WAKELEY. I have no idea what the amendment applies to. I do not see anything in the printed article to which it can apply.

The PRESIDENT. It applies to the day of the year on which the election should be held. This merely fills a blank.

The amendment was agreed to.

Mr. WOOLWORTH. Mr. President. I wish to move an amendment to the article, section twenty-eight—"No other state offices shall be created." I do not think I will say that this is necessary. I think when the first section of the article says that the executive department of the state shall consist of certain officers it excludes altogether the power on the part of the legislature or any other department of the government, to create any other executive offices. But I present the amendment because our present constitution contains a similar provision to our first section, and notwithstanding that a number of state executive offices have been created, and to prevent the mischief under which we have suffered heretofore, I move that this section be incorporated into the article as section twenty-eight, and I ask the ayes and nays on that motion.

Mr. ROBINSON. I move to strike out the word "offices," and insert "office."

Mr. WOOLWORTH. I accept the amendment.

Mr. STEWART. I move that the article be ordered engrossed for a third reading.

Mr. MAXWELL. Mr. President. I move the bill be now engrossed for a third time.

The motion was agreed to.

Judiciary Article.

Mr. HINMAN. Mr. President. I move that we now proceed to the consideration of the judiciary article.

The motion was agreed to.

The secretary read the next section, as follows:

Sec. 1. The judicial powers of this state shall be vested in one supreme court, district courts, county courts, justices of the peace, police magistrates, and in such other courts inferior to the district courts as may be created by law for cities and incorporated towns.

The first section was adopted.

The secretary read the next section, as follows:

Sec. 2. The supreme court shall consist of three judges, a majority of whom shall be necessary to form a quorum, or pronounce a decision. It shall have original jurisdiction in cases relating to the revenue, mandamus, quo warranto and habeas corpus, and such appellate jurisdiction as may be provided by law.

The PRESIDENT. Gentlemen of the convention, the gentleman from Otoe (Mr. McCann) will take the chair for a minute or two.

Mr. ROBINSON. Mr. President, I move to amend section two.

Mr. WAKELEY. Mr. President. I wish to offer an amendment to this section.

The secretary read the amendment. as follows:

"Insert after the word "revenue" the words "cases in which the state shall be a party."

Mr. LAKE. Mr. President. I am opposed to the amendment. The constitution of Wisconsin, which contains a provision that the state may be sued, and that the legislature may provide in what courts it may be sued, contains a restrictive clause in its judiciary article, which ours does not. I will read:

> "The supreme court, except in cases otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state; but in no case removed to the supreme court, shall a trial by jury be allowed. The supreme court shall have a general superintendency control over all inferior courts; it shall have power to issue writs of habeas corpus, mandamus, injunctions quo warranto, certiorari, and other original and remedial writs, and to hear and determine the same."

Now this clause, Mr. President, is quite restrictive in its provisions; but I take it, the whole constitution must be taken together and if there is any section or clause which controls that case or its signification, it ought to be taken into consideration. Then, again, we find in the same constitution, the following:

> "The legislature shall direct by law in what manner and in what courts suits may be brought against the state."

That gives general authority to the legislature. Now we have provided in our article, as it came from the hands of the committee of the whole that the legislature shall direct, by law, in what manner suits shall be brought against the state, and we have a law conferring that authority upon the supreme court, as provided for in this section. It seems to me it is filling up our article with useless words. In our section, we find that the legislature is left with full authority to determine what court shall have full jurisdiction where the state may be made to appear. Take this section with the section which was adopted in committee of the whole, which says that the legislature shall provide in what courts the state may be sued, and it is complete.

Mr. WAKELEY. Mr. President. I agree with my colleague that the whole constitution must be considered together, and that we allow the state legislature to provide that the state may be sued in the supreme court, but I hope he does not wish it to be taken as his opinion as a lawyer that the legislature will have power to confer any jurisdiction upon the supreme court which is not covered by some express provision of the constitution.

Mr. LAKE. I meant to say this to be my opinion; that, taking the section now under consideration, and the one which came from the committee of the whole providing that the legislature may declare in what courts the state may become a party, it is giving the legislature power to declare which court shall have jurisdiction in these cases.

Mr. WAKELEY. Mr. President. With the opinion of my colleague, as now expressed, I entirely concur; but I rise to say that in putting this language in the constitution, we are but following the language of the United States constitution, which reads:

> "In all cases, affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction."

It seems to me that there is no impropriety in inserting the provision in this section, and that in adopting here the language of the United State constitution, we are not loading down our own constitution. If we mean that the state shall be sued in the supreme court , it does no harm to say so here.

Mr. ROBINSON. Mr. President. I think it is not to be disputed that unless we confer upon the supreme court originally the jurisdiction in these cases it does not have it. Now the only question is whether in the provision of the legislative article we confer upon the legislature the power to make this: "The legislature may say in what courts these cases may be brought." Now, sir, I fear that will be construed with reference only to the second section.

The PRESIDENT PRO TEM. The question is on the amendment of the gentleman from Lancaster (Mr. Robinson).

The convention divided and the amendment was agreed to.

The PRESIDENT PRO TEM. The question is on the adoption of the section as amended.

The section was adopted.

The secretary read the next section, as follows:

Sec. 3. At least two terms of the supreme court shall be held in each year, at the seat of government.

The PRESIDENT PRO TEM. The question is on the adoption of the section as read.

The third section was adopted.

The secretary read the next section as follows:

Sec. 4. The judges of the supreme court shall be elected by the electors of the state at large, and their term of office shall be for six years, except at the first election, as hereinafter provided.

Mr. PHILPOTT. Mr. President. I have an amendment for that section to send up.

Mr. WOOLWORTH. Mr. President. While the gentleman is preparing his amendment I would like to ask the chairman of the judiciary committee (Mr. Lake) if he thinks the language of this section is sufficiently full? It reads, "their term of office shall be six years, except at the first election, as hereinafter provided." What does the word "except" refer to?

Mr. LAKE. To the term of office. It is the language used in the Ohio constitution, I believe.

Mr. THOMAS. I will state Mr. President, that that portion of the section is not from the Ohio constitution. The intention of the committee was that those elected at the first election should not hold their office for six years.

Mr. MANDERSON. Here it is Mr. President as in the Ohio constitution.

Sec. 11. The judges of the supreme court shall, immediately after the first election under this constitution be classified by lot; so that one shall hold for the term of one year, one for two years, one for three years, one for four years, and one for five years; and at all subsequent elections the term of each of said judges shall be for five years.

Mr. PHILPOTT. Mr. President. If the gentlemen will allow me I have my amendment prepared. It is to go in as a section of the article as a substitute for section four which I move to strike out.

The secretary read the substitute, as follows:

The legislature shall divide the state into three districts from which there shall be elected one member of the supreme court, except at the first election thereof when they shall be elected by the electors of the state at large; and their terms of office shall be six years, except at the first election their terms of office shall be as hereinafter provided.

The PRESIDENT pro. tem. The question is on the substitute just read.

The substitute was not adopted.

Mr. WOOLWORTH. Mr. President. I propose an amendment; between the words "office" and "shall" to insert the following words "except of those chosen at the first election as hereinafter provided," and to strike out the words "except at the first election, as hereinafter provided," so that it will read "the judges of the supreme court shall be elected by the electors of the state at large, and their term of office, except of those chosen at the first election, as hereinafter provided; shall be six years."

The PRESIDENT pro. tem. The question is on the amendment offered by the gentleman from Douglas (Mr. Woolworth).

The convention divided and the amendment was agreed to.

The PRESIDENT pro. tem. The question is on the adoption of section four as amended.

Mr. GRIGGS. Mr. President. I move to strike out all in the first line to the word "and," and insert the following:

"The state shall be divided into three grand divisions to be denominated, southern, central and northern, and one judge of the supreme court shall be elected from each of said districts"

Point of Order.

Mr. TOWLE. Mr. President. I rise to a point of order. This is the same amendment substantially offered by the gentleman from Lancaster (Mr. Philpott) which has been voted down by the convention and is not in order.

Mr. GRIGGS. Mr. President. I do not believe they are the same. I will read the proposition offered by the gentleman from Lancaster and then the one offered by me.

"The legislature shall divide the state into three districts from which there shall be elected one member each of the supreme court, except at the first election thereto, when they shall be elected by the electors of the state at large, and their terms of office shall be six years, except at the first election their terms of office shall be as hereinafter provided."

The amendment offered by me reads, "The state shall be divided into three grand divisions to be denominated southern, central and northern, and one judge of the supreme court shall be elected from each of said districts."

Mr. GRIGGS. Mr. President. The reason I make this motion at this time is because I believe that in the supreme court every part of the state should be represented. I believe, if we divide the state into three grand divisions as is the case in Illinois, that we will have as good judges as to elect them from the state at large. I believe it will suit the people of the state better. I believe the people of the southern part of the state are entitled to be represented in that supreme court. It is true it is not a political office, but if these three judges are elected from the state at large there will be rings formed in such a way that we will not succeed in getting the best men we have for those positions, and I am satisfied that all parts of the state will be better satisfied. I hope the motion will prevail. I call for the ayes and nays that the people may know who are their friends and who are not in this matter.

The secretary called the roll and the President announced the result yeas, 24; nays, 22,—as follows:

YEAS.

Ballard,
Curtis,
Gibbs,
Griggs,
Hinman,
Kenaston,
Kilburn,
Kirkpatrick,
McCann,
Moore,
Myers,
Philpott,
Price,
Reynolds,
Robinson,
Shaff,
Sprague,
Stevenson,
Stewart,
Thummel,
Tisdel,
Vifquain,
Weaver,
Wilson.—24.

NAYS.

Abbott,
Boyd,
Campbell,
Cassell,
Eaton,
Estabrook,
Granger,
Gray,
Hascall,
Lake,
Ley,
Lyon,
Majors,
Mason,
Manderson,
Neligh,
Parchin,
Scofield,
Thomas,
Towle,
Wakeley,
Woolworth,—22.

ABSENT OR NOT VOTING.

Grenell,
Maxwell,
Newsom,
Parker,
Speice,
Mr. President.

Mr. MOORE. Mr. President. I move a reconsideration of that vote. I did not properly understand the amendment made by the gentleman from Gage (Mr. Griggs). When I voted I thought I understood it but did not, and upon further reflection I am satisfied that the people of this state should choose the men to represent them upon the supreme bench from any part of the state where they can find a man suitable for the purpose. This thing of confining it to sections or sectional lines there can be no possible reason for. I do not wish to ascribe any impure motives to any gentleman present. I do not believe they have any. I think the best men of this state should be selected, no matter where they may be found. The questions that will come before this supreme court are questions which affect the whole people alike. There will not be any local questions for decision in this court affecting one part of the state more than another, therefore I do not wish any sectional boundaries to be made. I wish us to select our judges wherever we can find the best talent, and not confine them to separate portions of the state and be forced to take up men that we otherwise would not choose.

Mr. PHILPOTT. I hope the motion will prevail for several reasons. The people believe that while a man pretends to be honest and faithful in the discharge of his duties, notwithstanding that he may be influenced by local consideration, by reason of living in a certain section he may be induced to act in the interest of that section more than any other. A human heart being pretty full, and any man is liable to do this. The executive, legislative and judicial department, I want the judicial department to be so arranged that it may be selected from different parts of the state, not that all the judges and governors should be elected from one part of the state. I think we should have fair and impartial decisions, and if the judges were all selected from one section influences might be brought to bear on them which would prevent a fair discharge of their duties; and for that reason I am in favor of the amendment.

Mr. HASCALL. We do not want a local judge. We want a judge for the whole state, and the judges should be elected from different localities. The whole state is interested and ought to have a voice———

Mr. MYERS. I rise to a point of order. The motion pending is to re-consider, and does the chair consider that a debatable question?

The PRESIDENT (pro tem.) A motion to re-consider is not debatable.

Mr. MASON. I trust the gentleman will have leave to proceed, or sir, I do not believe———

Mr. MYERS. I rise to a point of order, with all due deference to the honorable gentleman.

Mr. MASON. I want to see your authority.

Mr. MYERS. It is in the rules.

Mr. MASON. Then I move that the gentleman have permission to proceed. I hate to see the provision marred by such a monstrous thing that the chief justice shall be compelled to live in the district from which he is elected. It is degrading to the interests of the state to presume that these sectional influences are to permeate the minds of those who are called upon to settle the great questions of property and right. Why, sir, if the Marchalls of this state live in Douglas county, I would take them away from there, and the day is not far distant, doubtless, when they will be congregated around the library at the Capitol, and is a state to be deprived of their learning and influence because they live at the captial, or is the day coming when we can forget, for a single moment, the little county in which we live and take in the whole state, and the whole interests? It seems to me this amendment was still born. I do believe, sir it is a most dangerous innovation that has been presented or proposed to this judiciary article. Consider, sir, for a single moment, the object of this amendment to this court of dernier resort. It is not for local parties, or to represent any certain interest, not as a representative body in anything, but as a mere oracle of the law, to interpret that which is made. Why, how unseemly it is to compare this tribunal, which represents every interest in the law making department of the government; to compare that tribunal which alone declares what that is which has been written, to that tribunal which shall take note of every local interest and every local community in the whole state! There is a reason for adopting a thing like this in an old state, but, sir, even the old states grew sick of this dangerous innovation. Look at New York, with her eight supreme courts of judicature at one time, and, sir, as many conflicting decisions in the supreme courts as there were tribunals; and it was with great difficulty that the law was ever settled; and those eight tribunals all local in their character. Now, sir, we have but one supreme court. We lift it over and above all locality and prejudice, and all influences that can intimidate or prejudice or bias; and it is shut out from view. The idea of the possibility of locality influencing the decisions of a judge! I would be false to myself, to my convictions of right; false, sir, to the high duty I owe to this state; false, sir, to the duty I owe to my children, were I to stand here and see this amendment prevail in silence. I hope no such dangerous innovation will prevail, and that the amendment may be defeated.

Mr. HASCALL. Mr. President. I believe I had the floor, and only took my seat in obedience to the rule which says that a member when out of order must take his seat. The rules entitled me to the floor.

The PRESIDENT (pro tem.) You are right.

Mr. HASCALL. This rule would prohibit judges, after they have been elected, having a residence at the capital, and then being eligible for re-election, because this rule requires them to live in their district to be eligible and if they come to live at the capital they would be ineligible.

Mr. ROBINSON. I do not know that I am in favor of the section as it now stands. My own views are that it should require judges to be elected by the electors of their several districts, for I am certainly in favor of dividing the state into three judicial districts, and to require the judges to be brought from each one of them. We are accused of making dirty aspersions when we presume that the supreme court would consider local interests. But I say they are guided by them, and every man is actuated by the prejudices imbibed from his sectional district. Now, I want to utilize this, Perhaps the people, in nominating their judges would in order to make them available as candidates, bring them from different portion of the state. I believe if they are brought from different portions of the state they will not be actuated by these prejudices. I do not believe they are above their prejudices, even if they wore the long robe and the powdered locks of old, and notwithstanding their dignity.

Mr. WAKELEY. Mr. President. I can hardly think it is necessary that any member of the convention should add anything to the very forcible considerations which have been presented by the distinguished gentlemen from Otoe (Judge Mason.) I felt some amusement when the vote upon this proposition was announced. I had supposed it was offered, as propositions sometimes are, in order that the mover and some who believe with him, might have the privilege of recording on the journal of this body their opinions and sentiments in regard to important questions. But I do not, for a moment believe that it would be the pronounced sense of this constitutional convention that the people, left to their untrammeled judgment, their unbiased choice in selecting the judges who are to sit in the highest tribunals of this state could not be trusted to elect men who would go upon the judgment seat unbiased, uninfluenced by any consideration of a local, of a partisan or a personal nature. And, sir, if you cannot trust the people of this state to select their judges anywhere within the limits of the state for fear they will prostitute their positions to any personal, partisan purpose, then, sir, for God's sake strike out this provision in your judicial article, abolish your separate supreme court, which we were sent here to establish and organize; go back to the system under which we have lived, where you have selected judges from three different districts, and sir, when gentlemen stand up on this floor and say that men elected from particular localites in this state will be influenced by this consideration, they do but insult the judiciary of our state, which for four years have come from different portions of the state. Can any gentleman stand up here and say that our judges have, for one moment, remembered the particular section of the state in which he lived, or in what county his wife and children were sheltered, when engaged in his official duties? I say, sir, it is an insult in advance to all men who may occupy a position upon that bench. Why, sir, the man who takes his position upon the bench, to administer justice and allow himself to be influenced by such considerations and be prejudiced in his decisions, that man should vacate his position and go home. Why, sir, is this proposition made? You say that because men live in particular localities their judgment may be swayed by favoritism. Suppose sir, that some question would arise where the question of North and South Platte may arise. Suppose the legislature should say that all north of the Platte river should constitute one grand division and all south of the Platte should constitute another division. Would they not have it in their power to prevent the people selecting more than one judge from that side of the river. But, sir, the time when that unfortunate division shall trouble the people of the state is fast passing away. I see no reason for the proposition—I see very great reason for opposing it sir, when you elect men for long terms of office, is there anything they can do which will better fit them to perform the duties of their office than to come here with their families, with their household goods and settle among the people residing here; here where they can go into your state library, which, in a short time will be a far better library than any private library found in the state. Shall you say that if one judge shall come here to live and the other two do not? Sir, I do think that when so anomalous a proposition as this is broached, a man should give some special reason for supporting it. I suppose that the people of this state are going to place upon the supreme bench of the state, judges who will be honest men and uninfluenced by local prejudices.

Mr. PHILPOTT. Mr President. I can say this; that whatever I think, I can say upon this floor, although I don't wish to cast any reflections of any kind upon the judges of this state, yet I do say that judges can fall; their acts have been impeached. Judges are but human. It is well known that, high though our present judges may be in character, learning and ability, they came near being impeached by our legislature. I don't know, sir, whether the gentlemen of our state were right or wrong. I am decidedly in favor of bringing the judges together from different parts of the state, believing that thereby we will be likely to have a better administration of justice, than if they were brought from the same portion of the state. How is it with the officers of the state when they come to reside here? Does the gentleman understand they have left their former place of residence to live here temporarily? By leaving there to come here do not they lose their residence? The gentleman last upon the floor tells us that there has been no prejudice or local feeling manifested by the present judges in their official acts. At the same time he tells us that these gentlemen constituting our present supreme court have been brought together from different portions of the state. Yes sir, heretofore we have brought them together from different portions of the state—why not do the same in the future. I say it is not impugining the principles of any gentleman who may be elected to the supreme court of this state, to say that they shall come from different portions of the state.

Mr. HASCALL. Mr. President. I only rise in order to make an explanation. So that when the record of this body is made up, we may not have the history of our state wrongly given. It has been said that the legislature came near impeaching our present supreme court. The legislature requested the judges to express an opinion as to a certain matter, and the judges expressed that opinion and because that opinion did not seem to suit a few individuals, there was some talk about impeachment, but this talk was confined to a few —less than half a dozen

Mr. GRIGGS. Mr. President. I did not presume, when I introduced this amendment that it would be made a matter of such strong opposition from certain quarters. I am sorry to bring in a proposition which will be likely to give offense to certain gentlemen, for there is no one in the state who would be more glad to elect certain gentlemen in this house, to the supreme bench of the state than I. It seems to me they have tried to ridicule the proposition and defeat it in that way and not by argument. In the Illinois constitution there was enacted the very thing I propose to have enacted here.

It was well remarked by the gentleman from Lancaster (Mr. Philpott) that one great inducement to keep our judicial officers so pure, is that they came from three different parts of the state. The only difference between that and what I propose is, that our present judges come from three different portions of the state that were called the "three districts" instead of three "grand divisions," as I propose to call them. But it is remarkable to me that this opposition coming from certain quarters—from those places from which two or three gentlemen shall be taken and placed upon the supreme bench, looks somewhat strange. I don't believe that if they are all selected from one place the judges will be quite as unbiased in their opinions as if they are selected from different parts of the state. And although the honorable gentleman from Douglas (Mr. Wakeley) thought it was intended as a joke, I am sorry to know that he was sleeping upon his judicial rights, because it appears that he was deeply interested in it. It was not intended as a joke, when there was twenty-four to twenty-two that said they were in favor of it, and I do hope they will not go back on their votes. It was intended for the benefit of my constituents and for good to all parts of the state and therefore I hope it will remain.

Mr. WOOLWORTH. Mr. President. It is not very strange that this matter suddenly brought to the attention of the convention should excite great feeling. It is not strange at all that those gentlemen who proposed it and have aspirations to this office should feel perhaps somewhat disturbed by the course of these persons; but sir, it is not strange at all that every man who pleads the cause of his clients at the bench of this state should be agitated at the course this is taking and must take. Now sir, I propose to have a plain talk about this matter, and unbosom myself a little, and I hope that my colleague (Mr. Wakeley) and the gentleman from Gage (Mr. Griggs) will not get alarmed and excited, because I think this is a pretty serious matter, but sir, let us look the matter in the face. A great many persons have said to me since I have been in attendance on this convention and before I came down here, that they thought I would be a very proper man to elect to the bench of the supreme court; well, I have this to say, if there should be a compensation fixed for that office which I think would warrant it, in justice to myself and family, and other circumstances should favor my taking a seat in that court; and I should be nominated and elected without any effort on my own part, or on the part of my personal friends, but if the people should freely tender me the office and certain other matters should concur; I should be proud to go there. Well, sir, before the discussion of yesterday, I knew very well that the circumstances to which I have referred would not occur and the idea was dismissed from my mind. I said to more than one man that I proposed to come here and discuss the question of salary just according to my own conscience, and I determined I should go for the very highest salary that could be obtained. Now sir, I do not think the first condition of my going into this court could ever possibly have occurred, and that is without any effort on my own part or the part of my friends, and therefore probably I never could have got there, if the compensation had been ever so much. I would not go there under obligations to cliques and parties, or such associations of men influenced by partizen spirit, such things constrain the actions of a judge. I propose to enter into matters of detail, and name names in the course of these remarks, and I have said this much to relieve all of any idea that I speak for myself. Now, gentlemen, let us look at this matter practically. Let us see where the dividing lines of *the state must be, and where the* gentlemen must come from who are to be elected your judges. Suppose now, you take a dividing line running along the Platte river, and one division is north of that line, who are the gentlemen who are mentioned and looked to by all the people of this state as the members of this court to come from that part of the state. Well, sir, the two gentlemen who now sit on that bench, Judge Lake and Judge Crounse, of course the eyes of the people are directed towards both, for sir, they have shown themselves fully competent men. There are two,. now, let us come into Douglas county and look around a little further. Reference has been made by the gentleman from Gage (Mr. Griggs) to my colleague (Mr. Wakeley.) I do not know his feelings whether he would go into this court or not, but I do know if the people of the state are permitted to make their choice neither trammeled by local lines, or party lines, that they are just as likely to select him as any other man you can name in the state. I do not stop to eulogize his learning and integrity.

Now, sir, there are three men in that section, and is it proposed in this convention to say that not one of these three men shall be elected to a seat on that bench? Do you propose to say, sir, that because they happen to live, one in Washington county and the others in a neighboring county, they shall not go into this court? Is that what you propose to do? Let us look a little further in this matter. Suppose you make two div isions *of North Platte; well, sir, I am not* very well acquainted up in that country. There may be men there of ability and learning, fit to sit in this court, that I never heard of and do not know, but I apprehend sir, that if you make the dividing lines of these three grand divisions where the lines now are, why, I apprehend that in all the country north and west of Douglas county, I say I may be mistaken, but I doubt if in what is the third judicial district you have any man whatever who would himself think he was fit to sit in that court except Judge Crounse. Now you gentlemen who come from that region just cast about and see where you are going to come out in this matter. I say there may be gentlemen there fit to sit in this court, that I do not know, but sir, I do not think the people of this state know them. I mean no disrespect whatever towards any gentleman of the profession or any of the other walks of life, who reside there, but I do not believe, I say it with the utmost frankness, that the people of this state do not know in that district of a single man who ought to go into the supreme court except Judge Crounse. Now sir, it is true the democrats are not supposed to be in the majority in this state, but sir, I will tell you one thing, that if the radical party do not nominate a good judicial ticket, if they do not put in the field men that command the respect of this people for that position, the democrats will put a ticket in the field and more than that they will elect it. I say it in all candor, just as sure as you sit in these seats the next supreme court will be every man democratic if you do not nominate a good judicial ticket on the radical side. I tell you Douglas county that polls the largest vote of any county in this state, will cast politics on one side and vote for the best men. Now, sir, I want if we are to run a democratic ticket—and I hope you radicals will give us a chance—I want to run a good democrat against Judge Crounse. I want to find in the democratic party a man who, in my opinion, and the opinion of the people, will make a better judge than Judge Crounse. I want you to nominate him, if elected he will be a good judge; but I want the democrats to nominate a man who will be a better judge; and then I want the people to elect a democrat. I do not want you to proportion the state so that the democrats will have no chance. Look a little further. Suppose you do district the state as it is now districted, what can very easily happen? A man from Douglas county can go a dozen miles, locate himself on the boundary line of Washington, perhaps locate himself at Fremont, then he will come from that judicial district, after being there six weeks and located. He satisfies your constitutional provision. You will compel, not good men, democrats or republicans, you will never compel good men to do anything like that. A man who would resort to such a petty trick as that, even to get around such a provision as this is, I would not characterize as a gentleman. Sir, I say you cannot get a good man to play a little trick like that in order to get around such a provision as this. Why? Because a good man never will do it; it is a small man; it is a man that thinks a great deal more of the office than he thinks of himself; that thinks rather a great deal more of the mere title of the office than he does of the office itself. Those are the kind of men who will play that sort of trick. Why, sir, I said a little while ago I was pretty well acquainted in that region. I know myself of men in my county just about equal to that sort of a game, and you are going to drive, perhaps out of Omaha, some men that answer very well in their place, but certainly never will answer for a seat in the supreme court. Come down below the Platte and see where you will stand. There are three or four gentlemen below the Platte river who have been spoken of in connection with this office. Either one of them would suit me very well. I would rather have my friend from Nemaha (Mr. Thomas) than almost any one else, because, in the first place, he is a good lawyer, and so are others; and he is a good man and so are others. But he is a democrat. Therefore I say frankly I should prefer him. There are many people all over this state, and I can speak particularly with regard to the county I come from, looking in the direction of Nemaha county for one of the judges of the supreme court. And there is a gentleman besides who now presides in the supreme court. A gentleman I undertake to say who brings to the discharge of his duty more native power, more vigor of intellect than any man in this state; a man who has devoted to the discharge of his official duties an amount of labor; of thought so very, very great; of learning, of ability on every hand, in every direction of the first character. Now, sir, there is another gentleman that the people look to. I know a gentleman member of the convention from Cass county whose name I have heard mentioned in this connection—Mr. Maxwell. With his professional character, ability and learning I am not personally acquainted, but I know he enjoys the confidence of the people of the county and section in which he lives, and a large part of the people of this state among whom he is known. I could go on and name more than one, more than two gentlemen, two gentlemen living below the Platte river, and out of the number you are to select these judges. Now, gentlemen, where do these men live? They live in the river counties all of them. Now I mean no earthly disrespect to the gentleman from Lancaster county. I am free to testify to this, that though I have never attended but one term of the court in this county at that time I was perfectly astonished to see the amount and character of the business pending here; and in the case I had down here, I was perfectly astonished to find that a gentleman, or two gentlemen, could not only teach me law, but could teach the court law, and did teach the court law in a case I thought tolerably safe and in which the court was about to decide for me when he interposed with authority which induced the judge to change his opinion. While I say all this for these gentlemen, I do not hesitate to say, I do not know of any one of them who will satisfy me as a member of the supreme court of this state. Perhaps I am mistaken. Perhaps there is somebody of more experience, not more ability, because I have in my mind's eye at this moment a man in Lancaster county, in whose future I have the utmost faith, and I tell the lawyers who have lived here from ten to fifteen years, that the day is coming to them, as perhaps it has already come to me, when they must look out for their laurels. I set out in this discussion by saying I should talk upon this discussion perfectly plain and call names. I could go on and mention other names, but I have done enough to answer my purpose. I have shown you, sir, that the circuit of country from which the three judges who are to sit in this court, is confined to the river counties and limited principally to a small number of the river counties. It will be just as certainly so as we go into this judicial election. Now I ask you to look at this matter practically. Supposing the republicans shall succeed in electing Judge Lake, and the democrats shall succeed in electing Judge Wakeley from my county, do you propose to say one or the other of these gentlemen shall be determined ineligible? Do you propose to say that? That is what you will say in effect, or else you will say what I think will be a crying injustice to the people of the state, you will say to them they shall not take the men of their choice for this highest seat in the new state government. And so it will be all along down the river and on every hand. Now, sir, I hope I have not turned myself into a nominating convention because I expect the minority principle to obtain—at any rate so far as the court is concerned,—and I suppose there will probably be but three candidates, and I have taken pains to mention just about enough gentlemen for you to see what situation we will be in if we pass this amendment. Now, gentlemen, I have taken up your time a great deal longer than I intended to. I have taken it up when I determined this morning not to occupy your time at all unless it should become my imperative duty. I say I have taken it up a great deal longer and wearied your patience, but I beg you, by every possible consideration, to think well before you say in effect, the people of this state will not select the best men, come from what part of the state they may, for this office of judge. Remember that what you do here is to go to the people, and there is no subject upon which the people are so much agitated as upon this matter of a new supreme court, its constitution and election. You have gone down just as far as you can afford to go, and stand before the people of this state, in fixing a brief term of office that of itself will have a tendency to prevent good men from giving up their practice and going into the courts; and just as far as you can by fixing the salaries. After doing all that, you undertake to say the people of this state shall not, for this brief term, and this small salary, select the best men that will take it. I tell you, sir, that you write the epitaph of this constitution, and you turn this convention into a public cemetary, just a sure as you bind the hands of the people of this state on this matter of a supreme court, so as to prevent the election of the very best men. I tell you that Douglas county will rise as one man and vote it down; and Douglas county, I apprehend, is not the only county that will do it. We wanted this body to be assembled more for the purpose of constituting this court, and constituting it properly, and selecting the right men more than anything else which called us.

Now, sir, defeat us, and, the result is just as certain as there is a God in heaven. Enough on that side.

I appeal further to this house; I appeal to it from the highest motives. The days are coming to an end, when I shall come before the courts of this state to practice my profession, and earn my living. The days are coming to an end when several of the gentlemen who practice at the bar, and show feeling on this subject, will appear before the courts of this state. But, rising above every consideration of myself, I enter a protest now and henceforth against the use of my name for a seat in this court—if anybody should be fool enough to mention it in that connection, so that I can stand before you and plead, in the name of justice and of the people; to beg of you, in every consideration that can actuate good men and wise men in framing this constitution. I beg of you to retreat from the position you have taken; and I put it, sir, upon the high ground I placed it on yesterday, when I asked you to make this salary sufficient to support good men, and right men, in the right way, in this office. Remember who you need there. You need men who are to adjudicate not only the causes of your clients, but the causes of yourselves. The titles of your own homes may come there in contest—the dearest interest you have. You, and every one of the people, and every citizen of this state, may go there to be at last adjudicated upon; and who shall say but the life of some man who sits here may at last, go there; and the issue may be life or death, or a worse issue than life or death,the issue of guilty or not guilty. Think of what is to be done in that court. The foundations of the jurisprudence of this state are to be laid by the gentlemen who are to be elected this fall. They are to be laid, sir, for all time to come. Do you want them merely pigmies? Do you not want for this work, before which any man may bow in humility, the best men come from what county or section they may? Sir, upon these foundations is to be erected the great structure of the law, beneath the roof of whose vault are to be traced the destinies of the citizens of this state for all time to come. Will you have it built of poor material? Will you have it built by journeymen? Sir, this is a serious question. Because if you look at it practically in the way I put it to you when I arose—in the forepart of my remarks—it utterly excludes the best men from sitting in the court, and you are driven to the extremity of taking men that are not the best men, and probably you will get men who are not only not the best men, but men that are not fit to sit there. Now, I beg of you to pause. If I have been warm in my language, earnest in my appeal it is because, as I said before, upon this bill turns the character of this constitutional convention; upon this pivot turns the character of the civil government you are to raise. I may be warm; I may be earnest, but it is because I feel, and I know that if you persist in this vote, if you will do this thing, nothing under heaven can save you.

Mr. LAKE. I do not intend to occupy but a very few moments of time. In fact, after the ground has been so entirely gone over by my eloquent and learned colleague, it would, perhaps, be best for me to abstain from saying anything; but there are one or two considerations I desire to submit. I shall endeavor not to trench upon the ground he has so completely covered.. I desire to say that it has been announced upon this floor that this amendment was based upon a provision found in the constitution of Illinois; that the reasons why it ought, perhaps, to obtain in Illinois do not, and should not influence the action of this convention at this time. By an examination of the constitution of Illinois, Mr. President, it will be seen that the judges of the supreme court are not elected by the people of the state at large. I presume that this fact was entirely overlooked by the gentleman who introduced this amendment. I presume it may not have been understood by the gentlemen who have voted upon this question. In Illinois it is provided in her constitution, that the state shall be divided into grand divisions and districts, and in each of those districts a supreme judge shall be elected by the people thereof. Therefore, the difficulty which has been foreshadowed could not come to pass in Illinois. It has been abundantly shown by the gentleman who has just taken his seat, that if one party elected a judge, resident in Otoe county, for instance, that if another political party should succeed in casting a greater number of votes for its candidates, and its candidate happened to live in the same county, that but one of these persons receiving a majority of the votes of the state should receive the office; and how are you to determine which of them should hold the office, the republican or the democrat? There is the difficulty the amendment leaves you to, or may bring about. And it may result when the candidates in these respective districts are voted for by the people of the state at large. If you should divide the state into these three districts, and provide, in addition, that the people of each district shall elect one judge, the difficulty would not be occasioned, because each political party would select one candidate and but one could receive a majority of all the votes. Suppose, for instance, you create a district south of the Platte which should include the counties of Otoe, Nemaha and Richardson, and the people of the district including these counties, do not alone elect the judge, the candidates of both parties being voted for by the people of the state at large; and suppose those two candidates receive a majority of all the votes of the state, what is the result? But one of them can be sworn into office; and how are you to determine which of them, pray? Suppose, for instance, that Mr. Thomas, the gentleman from Nemaha, should be the democratic candidate for the supreme bench, and suppose some other person, Judge Mason, for instance, should be the candidate of the republican party, nominated in that district, and voted for by the people of the state at large; and suppose both those gentlemen receive a larger number of votes than are cast for any other candidates for the supreme bench. Suppose that these two gentlemen receive a larger number of votes than any other two candidates in the state. They both reside in one district, and under your constitutional provision you have declared that but one of them can be elected. Don't you see, Mr. President, the difficulty you would run into? Why, sir, we would have, under this provision, at least six candidates for the office of judge of the supreme court; there will be residing within each district, two candidates who are running for the office. Now, suppose that it should happen that two of them,—one a Republican, and the other a democrat,—should receive a majority of all the votes cast. What is to be done? I call upon the gentleman who introduced this provision to explain what would be the result? How would he determine which of the two should be sworn into office?

Mr. President, if the gentleman desires this amendment to this section he should also provide that the people of each district shall elect one judge, and not leave it to the people at large. It must be arranged in this way, or the difficulty I have suggested will be the result Why, sir, in the election of senators we allow the people of the senatorial district to select their senator from such portion of the entire district as they see fit; they are permitted to select him from that county in which they can find material which best suits them and which they think will represent them best, and when we provide by our constitution that the state of Nebraska shall form one grand district for the election of judges of the supreme court, we should say also provided that the people of the state shall be free to select their judiciary from whatever portion of the state they choose. It has been said that if this provision be carried into effect, the judges can remove with their families to the capital to reside and that that removal will not destroy their residence in the place where they formerly lived. Does the gentleman from Lancaster seriously contend that this is the law? Does he pretend to say that if a judge should remove to this place with his family to reside that such abandonment of his home in the county from whence he came would not cause him to lose his residence in that county? I think, sir, that he would. I may be mistaken, but that is my opinion: I take it, Mr President, that when this convention reflects upon the fact of what may possibly result by the adoption of this provision, not one will be found who will sustain it, because it will be found utterly impossible to engraft such a provision in the constitution and operate successfully under it. We may as well adjourn this convention at once and go home, if we propose to engraft such a provision upon the constitution, unless we also provide that the people of the several districts shall each elect one judge. But is it seriously contemplated. Mr. President, to leave the question of the election of the judges of the supreme court of the state of Nebraska to the people of districts? I can't think it is. The supreme judges should be brought from whatever portion of the state the people choose to call them, and whenever candidates are found in the field, who have secured their nomination through any wrongful or corrupt means they can be rebuked, and set aside by the people. I tell you, Mr. President, that no constitution which deprives the people of thus making choice of the officials of the highest judicial tribunal in the state will satisfy the people. Any document which deprives them of that right, will be trampled under foot; it will not be endorsed; it would deprive them of one of the dearest rights they possess. I have had the honor of presiding as one of the district judges and also upon the supreme bench of this state for the last four years, and if I have ever thought of the lines which circumscribed the limits of the county in which I reside, it was unknown to me; if such a thought had entered my breast I should have been unworthy the confidence of the people who elected me to that high trust, and sir, I believe, I can speak for the gentleman who is absent (Judge Crounse) and if it were necessary for the gentleman who is present (Judge Mason) that in no case decided in the supreme court of the state have any such unworthy considerations ever been felt or thought of. I don't believe that any member of the profession to which I belong, of sufficient character and ability to be entitled to a seat upon the supreme bench, can be found who would be influenced by any such considerations. No man can pursue the study of the law without having inculcated within him those principles of honor and integrity which will prevent his being influenced in this way. Allusion has been made—I beg pardon for alluding to it, for I generally permit such matters to pass unnoticed as "the idle wind which I heed not"—but I say allusion has been made to certain things which occurred last winter, in which the supreme court and the legislature were connected. Sir, if my character is not sufficiently well established to stand without vindication by myself then let it go down. I am willing to leave all such questions with the people of the state. I know before God that my conscience is clear, I am satisfied that the people will do me complete justice and with that I am content. I only wish to say further, Mr. President, that I trust that this convention will not incorporate in the constitution a section, that shall render it impossible to carry its provisions into effect.

Mr. WAKELEY. Mr. President. I have not risen to argue this question. I would not have uttered another word, but for the personal reference which the gentleman from Gage (Mr. Griggs) had made of me. I understood him to say that I thought he offered his amendment as a joke. I said that I expressed my surprise that a majority of the convention had endorsed the amendment. Mr. President, another word. The gentleman saw fit to go further and to allude to me personally, and to ascribe to some supposed aspirations I might have for a judicial position, my remarks and views upon this question. It is the first time in this convention, so far as I remember, that any gentleman has ascribed to any other gentleman such motives. I have only this to say, I will leave the gentleman to decide for himself whether it is correct and proper.

Mr. GRIGGS. Mr. President. I am sure if the gentleman only said what he says he did, I was mistaken, I understood him in the course of his remarks to say that I offered the section to get myself upon the record and show to my constituents where I stood. I understood him that he was surprised, not at the action of the convention, but that it was introduced. If I have offended him I ask his pardon for it. But it does seem to me strange why all the opposition to my proposition should come from one quarter, that the three able speeches that have been made against it have been made by gentleman from one place. I can say, so far as my constituents are concerned, they are in favor of this.

In reference to one question of the gentleman on my right (Mr. Lake) he asks what would be done if two persons from the same district received a majority. To that I only have to say that only one could be elected from the same district. I do believe we can divide this state in such a manner that it will be entirely satisfactory to all parts of the state. I am perfectly willing to say that the judges of the supreme court shall be elected by the people of each district I hope it will not be reconsidered

Mr. HASCALL. Mr President. Allow me a moment. I do not rise for argument; but I rise to a question of duty. I wish to vote for the judges of the supreme court this fall, and inasmuch as there has been candidates nominated from the republican and democratic parties to this position this afternoon, I think there should be one nominated from the Woman's Rights party, and I take pleasure in putting in nomination the gallant, youthful and promising gentleman, my friend, Experience Estabrook, from Omaha, Douglas county, Nebraska. I will say that it is not proper to pass an eulogy upon a man until he is dead; but I will take it that he is not dead, but sleepeth, and pitch in. He is eminently qualified for the position. He measures 7 5-8 around the head—"No. 11" upon the "last"—stands six feet in his stockings—weighs 200 pounds avoirdupois—has hyperian curls; and a form and mould, that is the admiration of man and the delight of women. (Laughter.)

Mr. ESTABROOK. Mr. President. In accepting the nomination of the judge I must express the gratitude which I feel, but declare that it comes entirely unexpected. If I am elected to the position I will endeavor to serve you in the best manner possible. I know that I shall be elected, because the entire female portion of the community will give me their votes, and being the majority will elect me (laughter).

Having passed the joke let us come down to the plain consideration of this amendment. If there is any reason for this I am in favor of it; whatever is right, just and proper, I will adopt. Is it proper to divide the state into judicial districts for the election of judicial judges that shall preside over the district court, because they have to do with the particular local concerns of each district? As I said last night, we should divide the state into separate senatorial districts, because particular interests will be given to the charge of representatives, interests that pertain to the different sections. Are there any such considerations here. Suppose my friend Mr. Garnger has a case before Judge Crounse. The matter is to be determined before him, and before an individual elected from the extreme portion of Nebraska, we will suppose at Rulo; another from L'Eau-qui-court. Is not he just as much interested in the election of the individual from Rulo as are the inhabitants of Rulo. He has just as much to do with the determination of the case; and if elected 300 miles from here, it has just as much to do with the decision of that case as a man at home. If that be so and no local interest involved in it, I ask what propriety is there that these persons should be elected from particular districts? The very idea is repulsive. There may be individuals selected from different portions of the state, inasmuch as it is not a question of representation. I again thank my friends for nominating me to the position they have.

Mr. KIRKPATRICK. Mr. President. My views coincide with those of the gentlemen who have expressed themselves so eloquently. I have confidence in the integrity of those gentlemen likely to be elected supreme judges. I regret to see so much sectional feeling. I had hoped that was buried in this state. I have to thank the gentleman from Douglas (Mr. Woolworth) for his interesting exhibit of the judicial and legal talent of Nebraska; I was very much interested in it. I look upon the threat of defeating the constitution as idle. It is a mistake to suppose you could defeat the constitution by such a section as this.

The PRESIDENT, (pro tem.) The question is on the motion to reconsider.

The ayes and nays were demanded.

The secretary called the roll and the President announced the resul: Ayes, 36; nays, 10, as follows:

AYES,

Abbott,
Ballard,
Boyd,
Campbell,
Cassell,
Eaton,
Estabrook,
Gibbs,
Granger,
Gray,
Hascall,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Ley,
Lyon,
Majors,
Mason,
Manderson,
Maxwell,
Moore,
Myers,
Neligh,
Parchin,
Scofield,
Shaff,
Sprague,
Stevenson,
Thummel,
Thomas,
Tisdel,
Towle,
Wakeley,
Wilson,
Woolworth,—36.

NAYS.

Curtis,
Griggs,
Hinman,
Philpott,
Price,
Reynolds,
Robinson,
Stewart,
Vifquain,
Weaver, ,—10.

ABSENT OR NOT VOTING.

Grenell,
McCann,
Newsom,
Parker
Speice,
Mr. President.

Mr. ROBINSON (when his name was called) Mr. President. I wish to explain my vote. I am favorable to the amendment. I think they should be chosen by the electors of each district.

Mr. WILSON. Mr. President. I move to adjourn until eight o'clock this evening.

The committee divided and the motion was not agreed to.

The PRESIDENT pro tem. The question recurs on the amendment of the gentleman from Gage (Mr. Griggs.)

The amendment was not agreed to.

Mr. MANDERSON. Mr. President. I have an amendment to propose to this section, rendered necessary by a change in section four. I move to strike out all after the word "years" in the third line.

The motion was agreed to.

The PRESIDENT. The question now recurs on the adoption of section four.

The fourth section was adopted.

Mr. KENASTON. I move we adjourn until eight o'clock this evening.

The motion was carried and the convention, at six o'clock adjourned until eight o'clock.

Evening Session.

The convention was called to order at eight o'clock, by the president.

Mr. HASCALL. Mr. President. I move we pass over the order of the night and take up the judiciary article.

The motion was agreed to.

The secretary read the 5th section, as follows:

Sec 5. The judges of the supreme court shall, immediately after the first election under this constitution, be classified by lot, so that one shall hold his office for the term of two years, one for the term of four years and one for the term of six years; and at subsequent elections the term of each of said judges shall be six years.

Mr. MANDERSON. Mr. President. I move to strike out all after the words "six years."

The amendment was agreed to.

Mr. MYERS. Mr. President. I move to strike out "two," "four" and "six," and insert "five," "ten" and "fifteen."

The amendment was not agreed to.

The PRESIDENT. The question is upon the adoption of the section.

The section was adopted.

The secretary read the next section, as follows:

Sec. 6. The judge of the supreme court having the shortest term to serve, not holding his office by appointment, or election to fill vacancy, shall be the chief justice, and as such shall preside at all terms of the supreme court, and in case of his absence the judge having in like manner the next shortest term to serve shall preside in his stead.

Section six was adopted.

The secretary read the next section, as follows:

Sec. 7. No person shall be eligible to the office of judge of the supreme court unless he shall be at least thirty years of age, and a citizen of the United States; nor unless he shall have resided in the state at least three years next preceding his election.

The seventh section was adopted.

The secretary read the next section, as follows:

Sec. 8. The supreme court shall appoint a reporter and clerk of said court, who shall have their offices respectively for the term of three years, subject to removal by the court, and whose duties shall be prescribed by law.

The eighth section was adopted.

The secretary read the next section, as follows:

Sec. 9. The district courts shall have original jurisdiction in all cases of law and equity, and such appellate jurisdiction as is or may be provided by law.

The ninth section was adopted.

The secretary read the next section, as follows:

Sec. 10. The state shall be divided into five judicial districts, in each of which shall be elected one judge, who shall be judge of the district court therein, and whose term of office shall be four years, and until otherwise provided by law, said districts shall be as follows:

Mr. BOYD. Mr. President. I move to amend by striking out "five" and inserting "four."

The PRESIDENT. The question is upon the amendment offered by the gentleman from Douglas (Mr. Boyd.)

Mr. BOYD. Mr. President. Since the day the convention met, we have heard a good deal about economy. The judges have told us that there is not a sufficient amount of business to ocupy three judges seven months in the year. I think those who have talked should now improve the chance they have to use it.

Mr. STEVENSON. Mr. President. I would like to amend by striking out the word "five" and inserting the word "four," and also adopt the original report with respect to districts.

Mr. ESTABROOK. Mr. President. I think we are passing over the article now, section by section, considering the alterations of the committee of the whole.

The PRESIDENT. Yes sir.

Mr. ESTABROOK. Then I think the better way would be to refuse to concur to the amendments of the committee. If we refuse to agree to these five districts, it is the best way.

Mr. HASCALL. Mr. President. We are taking up the report of the committee section by section and passing upon the alterations made. We have a rule upon the subject (the last rule I believe) which provides that the reports shall be made to the convention, then the convention goes into the committee of the whole, and amends the report if they see fit, which is then referred back to the convention for its concurrence. We are now taking up this report, and considering it section by section.

Mr. STEVENSON. Mr. President. I withdraw my amendment for the present.

The PRESIDENT. The question is on the amendment to strike out "five" and insert "four." The ayes and nays are demanded, secretary call the roll.

The vote was taken and the result was announced—ayes, 17; nays, 27—as follows:

AYES.

Boyd,
Campbell,
Curtis,
Eaton,
Estabrook,
Lake,
Majors,
Mason,
Myers,
Stevenson,
Stewart,
Thomas,
Tisdel,
Vifquain,
Wakeley,
Weaver,
Woolworth,—17.

NAYS.

Abbott,
Ballard,
Cassell,
Gibbs,
Granger,
Gray,
Griggs
Hascall,
Hinman,
Kilburn,
Kirkpatrick,
Ley,
Lyon,
McCann,
Manderson,
Maxwell,
Moore,
Neligh,
Philpott,
Price,
Reynolds,
Scofield
Shaff,
Sprague
Thummel,
Towle,
Wilson.—27.

ABSENT OR NOT VOTING.

Grenell,
Kenaston,
Newsom,
Parchin,
Parker,
Robinson,
Speice,
Mr. President.—8.

So the amendment was not agreed to.

Mr. HASCALL. Mr. President. I move the adoption of the section.

The PRESIDENT. Gentlemen, the question is on the adoption of the section.

Mr. HASCALL. I move the previous question.

The "previous question" being seconded.

The PRESIDENT. Gentlemen, the question is shall the main question be now put.

The question was agreed to.

The PRESIDENT. The question is on the adoption of the section.

Section ten was adopted.

The secretary read the next section, as follows:

Sec. 11. Provision may be made by law for the increase of the number of the judicial districts whenever two-thirds of the members of each house of the legislature shall concur therein. Such districts shall be formed of compact territory, and bounded by county lines; and such increase shall not vacate the office of any judge.

Mr. MOORE. Mr. President. I move to strike out the word "two-thirds" and insert "a majority."

The motion was not agreed to.

Mr. BOYD. Mr. President. I have an amendment to the section. I move to strike out all in the first line, including the word "districts" and insert the following:

"The legislature ma yafter the year 1875, and every five years thereafter increase the number of justices of the district courts and the judicial districts of the same."

The PRESIDENT. The question is on the amendment of the gentleman from Douglas (Mr. Boyd.) The ayes and nays are demanded—secretary call the roll.

The vote was taken and the result was announced—ayes, 29; nays, 15 as follows:

AYES.

Abbott
Ballard,
Boyd,
Campbell,
Cassell,
Eaton,
Estabrook,
Granger,
Gray,
Kirkpatrick,
Hinman,
Lyon,
McCann,
Mason,
Manderson,
Maxwell,
Moore,
Myers,
Neligh,
Reynolds,
Shaff,
Stevenson,

Stewart,
Thummel,
Thomas,
Vifquain,
Wakeley,
Wilson,
Woolworth,—29.

NAYS.

Curtis,
Gibbs,
Griggs,
Hascall,
Kilburn,
Lake,
Ley,
Majors,
Philpott,
Price,
Scofield,
Sprague,
Tisdel,
Towle,
Weaver,—15.

ABSENT OR NOT VOTING.

Grenell,
Kenaston,
Newsom,
Parchin,
Parker,
Robinson,
Speice,
Mr. President.—8.

So the amendment was agreed to.

The PRESIDENT. The question is on the adoption of the Section as amended.

Mr. WAKELEY. Mr. President. I think there is a verbal inaccuracy in the section, the word "justices" should be "judges."

The PRESIDENT. It will be so amended if no objection. So amended. The question is on the adoption of the substitute.

The secretary read the next section as follows:

Sec. 12. Judges of the district court may hold courts for each other, and shall do so when required by law.

Section twelve was adopted.

The secretary read the next section, as follows:

Sec. 13. The judges of the supreme court shall receive a salary of three thousand five hundred dollars, and the judges of the district courts shall each receive a salary of $3,000 per annum, payable quarterly, until otherwise provided by law, and after said salaries shall be fixed by law they shall not be increased or diminished during the term for which said judges shall be respectively elected.

Mr. LAKE. Mr. President. I move to strike out the words "five hundred" after the words "three thousand."

The ayes and nays were demanded.

The secretary called the roll and the President announced the result, ayes, 22; nays, 23; as follows:

AYES.

Campbell,
Cassell,
Curtis,
Estabrook,
Griggs,
Kilburn,
Kirkpatrick,
Lake,
McCann,
Majors,
Maxwell,
Moore,
Myers,
Neligh,
Philpott,
Price,
Reynolds,
Shaff,
Sprague,
Stevenson,
Thomas,
Tisdel.—22.

NAYS.

Abbott,
Ballard,
Boyd,
Eaton,
Gibbs,
Granger,
Gray,
Hascall,
Hinman,
Ley,
Lyon,
Mason,
Manderson,
Scofield,
Stewart,
Thummel,
Towle,
Vifquain,
Wakeley,
Weaver,
Wilson,
Woolworth,
Mr. President.—23.

ABSENT AND NOT VOTING.

Grenell,
Kenaston,
Newsom,
Parchin,
Parker,
Robinson,
Speice.—7.

Mr. MAXWELL. Mr. President. I move to strike out the words "three thousand" and insert the words "twenty-five hundred."

Mr. STEVENSON. Mr. President. I hope this amendment will prevail. I do not see the necessity of paying five judges $3,000 each where at least two of the five have got hardly anything to do. Today we cut down the salaries of the executive officers, who have to remove here to Lincoln with their families. I hold these judges of the district court should not be paid any more. I believe in paying a man according to what he does. Take for instance the fifth district that has the counties of Platte, Hall and Lincoln in it. Only those three counties have had cases in the district court during the last four years. Platte had 47 cases, Hall 16 and Lincoln 65, and I am almost positive the business will not increase any more in those western counties than in the counties along the river. We have had the testimony of two district judges who say that four of them can do the business and do it easily. Why should we put our hands into the treasury of the state and take out $3,000 every year when there is no need of it? Upon what ground do I base my calculations? Here we have created county courts and given them jurisdiction in cases as high as $500. I hold there is not one case in ten where the amount in controversy amounts to more than that. They are generally ex parte cases; cases upon notes and collections, in which parties can go into the county court and get judgment, and not wait until the district court sits. I think we should look to the amount of labor these judges have to perform and pay them accordingly.

Mr. GRAY. Mr. President. It is not my disposition to detain the convention more than five minutes; but lest there should be some misapprehension about the situation of that portion of the country which this gentleman came from, I desire to be heard. During all the discussion upon these questions about the number of the districts and the salaries of the judges I have been willing to listen to others, yet some have misrepresented a little in reference to the question as to what should be the salary for district judges. I desire gentlemen to understand that when they speak from the experience of one, two or three years ago, that it is no criterion to judge the present and the future by. I suppose what we have created in the fourth judicial district is a fair average of the other five we have created. It contains nearly all of what has been the third judicial district. With reference to that section I undertake to say that what we have created as the fourth judicial district here for the next year to come will have one-fourth the business more than in the year last past, and thus the business in that district has doubled each year. When I first went into Dodge county three years ago, there was not so much business as there is now in Cuming county. In less than three years the county of Cuming will have enough to keep a judge at work for two weeks, and the same in Stanton county. I know how fast that county is filling up. I desire to say that the third district, at each term of court within the past three years, as a general rule, the court has worked all day and at least half the night, and the members of the bar have had to work night and day, because the judge has not had time. He was so limited in his salary, and he could not borrow the means to go beyond the reach of his salary. He had to pay his expenses out of his salary and work night and day to work within that salary. I do not want a judge to work like a nigger, or a slave, or let the business be slobbered over in the hurry. There is no fault to find with the fact that we have made five judicial districts. We have not created them 6 months too soon. The next question is of pay. The gentleman moves to make them $2,500. I make an amendment that the salary of the judges be $3,500. I hope this amendment will prevail. I make it in earnest. I think the district judges should be paid as much as the supreme court judges. Besides, sir, we desire to have on one district bench with us, and I presume the people desire the same—men of the best talent. I wish to practice before no other than such a man.

Mr. LAKE. Mr. President. If the gentleman from Dodge is serious in the proposition he makes, inasmuch as he voted the negative on striking out $3,500 and inserting $3,000. if he will move to reconsider that vote, I am satisfied the temper of this convention is such that we can make all the salaries $3,000.

Mr. GRAY. I desire to say that I am not actuated by any such spirit, because if this convention should fail to increase the salary of the district judges with that of the supreme court judges—I feel no disposition on my part to dragthem down. While I wish to see them on a level I will not drag them down to the level of the others, but help raise the lower to the higher.

Mr. HASCALL. This $3,500 we inserted was a compromise sum, and it seems to be satisfactory. I think it is unwise to travel over this ground again. So far as the district judges are concerned perhaps we can well afford to let it remain at $3,000. But if the state could afford it I think it would, perhaps, be justice to raise it up to $3,500 or more, but I think we will satisfy our constituency to let everything remain as it is at the present time.

Mr. ESTABROOK. It is well enough to look around a little and see where we stand on this question. We have had, since we have been in the territory, 17 long years, but three men on the bench. We have in this convention two gentlemen who since we became a state have performed the functions of that place. They have both advised us and instructed us, and although they were compelled to come here twice a year and sometimes, I think, oftener, to hold special terms of the supreme court, yet they have been unable to discharge all their duties, and have three, four, five, six and seven months to themselves. Now, then, they have served the state always as a territory and as a state, for $2,000 per year, and during a portion of the time when money was worth $2,75 on the dollar. I have heard that no one even wished to resign, and whenever the office has been vacant I have heard of no particular difficulty in getting a gentleman to make a martyr of himself to take up his cross. Now we come into the convention and the subject is before us as to how many officers, judges of the bench, shall be required for the next five years, as it stands, for the discharge of the duty that has been performed by these three men. Well, for the discharge of this duty we have agreed, solemnly and deliberately, calling the ayes and nays, that there should be five more district judges appointed, and that for five years we have declared solemnly that that number shall neither be added to or diminished. That is to say, that duty which, for 15 years has been discharged by three gentlemen, having from five to seven months leisure, we will have eight gentlemen perform the same duty.

The duties of our district judges have been relieved by our having provided for three supreme judges, and also by the provision for county judges, who will have jurisdiction of $500.00. I believe that the judges are relieved of fully one-third of their duties.

Mr. GRAY. I would say that Judge Crounse, judge of the third district, recommended to the last legislature that the law should be amended so as to allow a two weeks term of court in Dodge county. Since then he has used up all that time. He made the same arrangement in Dodge county and he has used up all the time there, too.

Mr. ESTABROOK. I have no doubt of it, sir, but that is met by the proposition I have made which was, that when you give county judges a jurisdiction of $500.00 it will relieve the district judges of a large proportion of their work. They will also perform such chamber duties as shall be provided by law. So that it will not be necessary for the western counties to send to the river to get a judge to serve an injunction, but it can be done by a county judge for the time being, to be heard when the judge holds his regular term of court in that county. My friend from Dodge (Mr. Gray) says these district judges have a great deal of work to do, and they should have $3,000.00 a year. There are some counties where it is worth more than that to hold court in them, because when you go there, you must go with a guard. I would not be niggardly; I would pay every public servant what he is really worth. I would not hire a public servant unless I needed him. I want to pay him a good salary, for we are the richest state in the union. I repeat it sir, for I want the reporters to get it—we are the richest state in the union according to our population. But do we need all these judges? If we have one in each county we will have 47 county judges in addition to the three supreme judges, and if we divide up among all these the business which has been done by three district judges and which has not occupied them more than seven months in the year, it seems to me that we will not require five district judges. If we have this luxury, then as a matter of course we will have to pay for it.

If you place the smallest possible sum consistent with equity and justice, take about twenty-five hundred dollars, why it would be truly appalling to think that we have to supply a large army of lawyers at $3.500 a head. It would be the biggest tax ever imposed on this people. It is true I tell you where there is one who makes over two thousand dollars in his profession in this country there is one hundred who don't make one thousand. There are some who make ten or fifteen thousand but they are very exceptional cases. Now I will vote for putting this thing down to two thousand dollars if we must vote for five mortal judges, for I tell you there is no one of them worth more than Judge Mason or Judge Lake.

These are my views and now that everything has come down in price, corn is very plenty this year and cheap, I see no particular reason why you should take this kind of a strut. I tell you while we are serving a very good-natured master who will indulge us yet I think he will frown down upon us when he looks over this bill .

Mr. HINMAN. Mr. President. I was going to remark that I don't know whether we can instruct these ancient gentlemen who live in the villages, of the amount of business we do in this little fifth wheel where I happen to live. These gentlemen get up here and pretend to say that they don't get more than two thousand dollars a year. I know of two lawyers in our place who will make more than that at the next term of court. Why don't you come out there where we have some business. May be we will elect you to the judgship if you will come out there and show your worth. Come out and show your bottom(Laughter). Now let us for a moment look at the business of Lincoln county. I don't believe there has been a court there that has not had from 15 to 20 criminal cases, it is not unusual to have 30 indictments brought in at one term. If you look at the records of the state you will find that we have sent more men to the state penitentiary than any other county in the state except Douglas county. Why, sir, it is no unusual thing to run that court until two o'clock in the morning. The judge and the lawyers are both over-worked and you ask him to work for a mere pittance. We wish to elect a man who will try and do his duty. It is not infrequent we have suits involving $1,000. In the last term of court we had a case that took six weeks to take the testimony, involving about $20,000, it had to be passed over, and is not yet settled. I hope the convention will vote a liberal salary.

Mr. ROBINSON. I move the previous question.

The PRESIDENT. Shall the main question be now put?

The question was agreed to.

The PRESIDENT. The question is on striking out "three thousand" and inserting "twenty-five hundred."

The ayes and nays were demanded.

The secretary called the roll and the President announced the result ayes, 26; nays, 19, as follows:

AYES.

Ballard,
Campbell,
Cassell,
Curtis,
Estabrook,
Gibbs,

Griggs,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Lyon,
McCann,
Majors,
Maxwell,
Moore,
Myers,
Neligh,
Philpott,
Price,
Reynolds,
Shaff,
Sprague,
Stevenson,
Stewart,
Weaver.—26.

NAYS

Abbott,
Boyd,
Eaton,
Gray,
Hascall,
Hinman,
Ley,
Mason,
Manderson,
Robinson,
Scofield,
Thummel,
Thomas,
Tisdel,
Towle,
Vifquain,
Wakeley,
Wilson,
Woolworth.—19.

ABSENT AND NOT VOTING.

Granger,
Grenell,
Newsom,
Parchin,
Parker,
Speice,
Mr. President.—7.

Mr. BOYD. Mr. President. I move the adoption of the section and on that motion move the previous question.

The PRESIDENT. Shall the main question be now put?

The motion was agreed to.

Section thirteen was adopted.

Mr. HASCALL. Mr. President. I move a reconsideration and to lay that motion upon the table.

The committee divided and the motion was agreed to.

The secretary read the next section, as follows:

Sec. 14. No judge of the supreme or district courts shall receive any other compensation, perquisite or benefit in any form whatsoever, nor perform any other than judicial duties to which may belong any emoluments.

Section fourteen was adopted.

The secretary read the next section, as follows:

Sec. 15. There shall be elected in and for each organized county one judge who shall be judge of the county court and whose term of office shall be two years, but the legislature may create districts of two or more contiguous counties in each of which shall be elected one judge, who shall take the place and exercise the jurisdiction of county judge in said district.

Mr. NELIGH. Mr. President. I move to strike out all after the word "years," in the second line. My reason is this. That amendment provides for two or three more counties being united in one district for a county judge. It will work great hardships to new counties. I believe each organized county ought to have one judge. In case of two or three counties being connected together, a person having some little law or probate business to transact would have to go forty or fifty miles to have it done. Seeing that the people of Nebraska are so willing to pay taxes, I am for one, willing that the homesteader who goes on a settlement of fifty or a hundred miles out, should have the benefit of a court in the county he settles in. I hope this amendment will prevail.

The amendment was agreed to.

The PRESIDENT. The question is on the adoption of the section.

Section fifteen was adopted.

The secretary read the next section, as follows:

Sec. 16. County courts shall be courts of record, and shall have original jurisdiction in matters of probate, settlement of estates of deceased persons, appointment of guardians and settlement of their accounts, in all matters relating to apprentices, and in proceedings for the collection of taxes and assesments, and such other jurisdiction as may be given by general law; provided, that in counties having a population of three thousand and upwards, the legislature may confer upon said courts jurisdiction in sales of real estate by executors, administrators and guardians. But they shall not have jurisdiction in criminal cases in which the punishment may exceed six months imprisonment or a fine of over five hundred dollars nor in actions in which the title to real estate is sought to be recovered, or may be drawn in question, nor in action on mortgages, or on contracts for the conveyance of real estate, nor when the debt or sum claimed shall exceed five hundred dollars.

Mr. ROBINSON. I move to make an amendment to insert, after the word "estate" in the sixth line, "on execution and." I think when this court has jurisdiction over $500 it may try to sell real estate on jurisdiction.

The convention divided and the amendment was agreed to.

The sixteenth section as amended was adopted.

The secretary read the next section, as follows.

Sec. 17. Appeals to the district court from the judgments of county courts shall be allowed in all criminal cases on application of the defendant, and in all civil cases, on application of either party in which the amount in controversy shall exceed twenty-five dollars, and in such other cases as the legislature may provide.

The seventeenth section was adopted.

The secretary read the next section, as follows:

Sec. 18. Justices of the peace and police magistrates shall be elected in and for such districts, and have and exercise such jurisdiction as may be provided by law. Provided, that no justice of the peace shall have jurisdiction of any civil case where the amount in controversy shall exceed $100, nor in a criminal case where the punishment may exceed three months imprisonment, or a fine of over $100, nor in any cause involving the title to real estate.

The eighteenth section was adopted.

The secretary read the next section, as follows.

Sec. 19. All laws relating to courts shall be general and of uniform operation; and the organization, jurisdiction, powers, proceedings and practices of all courts of the same class or grade, so far as regulated by law, and the force and effect of the process, judgments and decrees of such courts severally, shall be uniform.

The nineteenth section was adopted.

The secretary read the next section, as follows.

Sec. 20. The legislature may, for cause entered on the journals, upon due notice an opportunity for defence, remove from office any judge of the supreme or district courts, upon concurrence of three-fourths of all the members elected of each house. All other officers in this article mentioned shall be removed from office on prosecution and final conviction for misdemeanor in office, in such manner as may be provided by law.

The twentieth section was adopted.

The secretary read the next section, as follows.

Sec. 21. All judges of courts of record, inferior to the supreme court, shall, on or before the first day of June each year, report in writing to the judges of the supreme court, such defects and omissions in the laws as their experience may suggest, and the judges of the supreme court shall, on or before the first day of January of each year, report in writing to the governor such defects and omissions in the constitution and laws as they may find to exist, together with appropriate form of bills to cure such defects and omissions in the laws. The judges of the several district courts shall report to the next legislature the number of days they have held court in each of the several counties composing their respective districts, during the preceding year.

The twenty-first section was adopted.

The secretary read the next section, as follows.

Sec. 22. All officers provided for in this article shall hold their offices until their successors shall be qualified; and they shall respectively reside in the district, county or precinct for which they shall be elected or appointed. The terms of office of all such officers, when not otherwise prescribed in this article, shall be two years. All officers where not otherwise provided in this article, shall perform such duties and receive such compensation as may be provided by law.

The twenty-second section was adopted.

The secretary read the next section as follows:

Sec. 23. In case the office of any judge of the supreme court or any district court shall become vacant before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor until a successor shall be elected and qualified; and such successor shall be elected for the unexpired term at the first annual election that occurs more than thirty days after the vacancy shall have happened. Vacancies in all other elective offices provided for in this article, shall be filled by election; but where the unexpired term does not exceed one year, the vacancy may be filled by appointment, in such manner as the legislature may provide.

The twenty-third section was adopted.

The secretary read the next section, as follows:

Sec. 24. The legislature shall provide by law in what manner and in what courts suits may be brought against the state.

The twenty-fourth section was adopted.

The secretary read the next section, as follows:

Sec. 25. The several judges of the courts of record in this state shall have such jurisdiction at chambers as may be provided by law.

The twenty-fifth section was adopted.

The secretary read the next section, as follows:

Sec. 26. All process shall run in the name of the People of the State of Nebraska and all prosecutions shall be carried on In the name of the People of the State of Nebraska; and concluding against the peace and dignity of the same.

The twenty-sixth section was adopted.

The PRESIDENT. The question is now upon the engrossment of the article for its third reading.

Mr. GRAY. I now move to reconsider the vote by which section ten was adopted, and also to move to lay that motion on the table.

The motion was agreed to.

Mr. WAKELEY. Mr. President. I move the adoption of a new section, as follows:

Sec.——— Ballots for judges ot the supreme and district courts shall be deposited into separate boxes to be provided for that purpose.

Mr. HINMAN. I was about to suggest a provision for the election of district judges and their qualifications.

Mr. WAKELEY. Mr. President that is the same amendment in substance that was offered in committee of the whole by the gentleman from Otoe. I renew it here, and ask the attention of the convention for a few moments while I speak to it. I suppose Mr. President that we shall all agree upon the plural proposition that the election of judges should so far as possible, be kept from all partisan and political things. There are two methods.

It may be that it would not be deemed advisable in this state to have supreme and district judges elected on different days, but sir, the proposition which is now before the convention does not require any additional expense, trouble or labor. It simply provides that in the election of these judges, ballots shall be deposited in a separate box from that in which ballots for political officers shall be deposited. I think, Mr. President, that the adoption of that simple provision would tend very considerably towards relieving the election of our judges from political influence. I believe that voters would be much more apt to make a political question of the election of judges if their names are on the same ballot as are the names of candidates for political offices. The reason, as we all know, is obvious. We know that men take the ticket of their party, and vote it, because it is the ticket of their party. That, sir, is all I care to say on this proposition. It seems to me it is eminently a proper one, and I think it is advisable that we should adopt it.

Mr. GRIGGS. Mr. President. The gentleman from Douglas (Mr. Wakeley) says that the election of judges of the supreme court should be kept as far as possible, from questions of a political nature. I would agree with him in that respect, but don't see that the method proposed would secure the end desired. I don't believe that simply depositing a ballot in another box would prevent the election of judges from becoming a political issue. Why our friend Woolworth gave due notice that he wanted to run a democratic candidate against Judge Crounse. It seems to be understood that the filling of these positions is to be a political question. I don't see that the section offered by the gentleman from Douglas (Mr. Wakeley) will secure the end desired. The simple fact of having the ballots placed in a separate box will not accomplish that end.

The PRESIDENT. The question is upon the amendment offered by the gentleman from Douglas (Mr. Wakeley.)

The ayes and nays being demanded the secretary called the roll.

The President announced the result—ayes 17; nays, 27—as follows·

YEAS.

Abbott,
Boyd,
Campbell,
Eaton,
Hascall,
Hinman,
Ley,
Mason,
Manderson,
Moore,
Stevenson,
Thummel,
Thomas,
Towle,
Vifquain,
Wakeley,
Woolworth.—17.

NAYS.

Ballard,
Curtis,
Estabrook,
Gibbs,
Granger,
Gray,
Griggs,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Lyon,
McCann,
Majors,
Maxwell,
Neligh,
Philpott,
Price,
Reynolds,
Robinson,
Scofield,
Shaff,
Sprague,
Stewart,
Tisdel,
Weaver,
Wilson—27.

ABSENT AND NOT VOTING.

Cassell,
Grenell,
Myers,
Newsom,
Parchin,
Parker,
Speice,
Mr. President—8

So the amendment was not agreed to.

Mr. WOOLWORTH. Mr. President. I desire to offer another section to the article.

The secretary read the proposed section, as follows:

"No salary shall be paid by the state to any county judge."

I wish to protect the state from having to support these 47 judges.

Mr. LAKE. Mr. President. I hope this proposition will prevail. I believe that provision should be made by law for the payment of these county judges by their respective counties.

Mr. MASON. I will say that our probate judges are now paid by fees, and if their jurisdiction is extended to $500 there will be no difficulty about salaries.

Mr. SPRAGUE. Mr. President. I am in favor of the county judges getting their pay from fees, but if the state should have business in these courts I think it should pay for it.

Mr. THOMAS. Mr. President. The county judges provided for in this provision should be paid for in the same way probate judges are now paid; they get no salary, but are paid by fees. The proposition of the gentleman from Douglas (Mr. Wakeley) is that they may be paid in this way, or if the legislature saw fit, it could be provided that they should receive a salary from the county. My plan would be to have these judges paid entirely by fees. What can these county courts do for the state Suits against the state will be brought in the district court. It seems to me that this section is exactly right. It is certain sir, that we shall provide for a guard of the state treasury to say that the legislature shall take no money out of it to pay these county judges.

Mr. MASON. All I desire to say in answer to the gentleman from Saunders (Mr. Sprague) the state never pays costs or fees in any case.

In all criminal cases the costs are paid by the counties. I think that if you leave it an open question whether the state shall pay these county judges or not you sink the whole constitution. You have wiped out commencement fees and I think justly, and now say that you will not pay these fifty county judges. I hope this provision may prevail.

Mr. SPRAGUE. I believe by my vote I have shown as much desire to protect the state treasury as any other gentleman that has been here, and I am in favor of not paying a salary, but as to compensation, that is another question.

The PRESIDENT. The question is on the adoption of the section.

The ayes and nays are demanded; secretary call the roll.

The vote was taken and the result announced—ayes, 39; nays, 3, as follows:

AYES.

Abbott,
Ballard,
Boyd,
Campbell,
Curtis
Eaton,
Estabrook,
Gibbs,
Granger,
Gray,
Griggs
Hascall.
Kilburn,
Lake,
Ley,
Lyon,
McCann,
Majors
Mason,
Manderson,
Maxwell,
Moore,
Philpott,
Price,
Reynolds,
Robinson,
Scofield,
Shaff,
Stevenson,
Stewart,
Thummel,
Thomas,
Tisdel,
Towle,
Vifquain,
Wakeley,
Weaver,
Wilson,
Woolworth,—39.

NAYS.

Kilburn,
Neligh,
Sprague,—3.

ABSENT AND NOT VOTING.

Cassell,
Grenell,
Hinman.
Kirkpatrick,
Myers,
Newsom,
Parchin,
Parker,
Speice,
Mr. President,—10.

Mr. LAKE. Mr. President. If there are no other amendments to be offered I will move to order this article engrossed for its third reading.

Mr. HINMAN. Mr. President. I have an amendment to offer as an independent section.

The secretary read the section, as follows:

"No person shall be eligible to the office of judge of the district court unless he shall be 21 years of age and a citizen of the United States; nor unless he shall have resided in this state at least one year next preceeding his election, and they shall be elected at the general election in the year 1871, and every four years thereafter."

Mr. STEVENSON. Mr. President. I should like to know how a man could be elected to an office until 21 and a citizen of this state? I don't see any necessity for this section. Of course he cannot hold office until he is a legal voter.

Mr. LAKE. Mr. President. I believe this proposed section to be entirely useless. So far as the election is concerned it is provided that they shall be elected for six years. It is provided that the supreme judges shall be 35 years of age, and it was thought best to leave that of the district judges with the legislature. A constitution is intended to put restrictions on the legislature. We have thrown one restriction on the legislative power, in respect to the age of supreme judges, but do we desire to do it in respect to district or county judges? I think not.

The motion was not agreed to.

The PRESIDENT. The question is on engrossing the bill.

Mr. EATON. Mr. President. I move that when we adjourn tomorrow it be at noon until Monday at two o'clock.

The PRESIDENT. I will put the motion on engrossement first.

Mr. MANDERSON. Mr. President. I hope any further action upon that article will be postponed until next week. For one I must confess, that that judicial article as it now stands, and is about to be engrossed is of a character that on its final passage will not receive my vote. I believe there are other members of the convention who feel in the same way. I suggest more particularly a very objectionable feature is the county court system as it stands there. I hope further action will be postponed until the coming week.

Mr. MASON. Mr. President. I have the same request to make for myself. I desire to review this article and there are other gentlemen who feel in the same manner. I do not know whether it can be improved upon or not. If it can be, certainly the convention will be anxious to do so.

Mr. THOMAS. Mr. President. I hope this article may not be ordered engrossed at the present time, I think the article should be perfectly examined.

Mr. LAKE. Mr. President. At the solicitation of the gentlemen who desire further time to examine this article and being also of the opinion that we cannot give it too careful consideration I will withdraw the motion to engross.

Mr. WAKELEY. Mr. President. I move that the further consideration of the judicial article be postponed until Monday at two o'clock.

The motion was agreed to.

The PRESIDENT. The question is on the motion of the gentleman from Otoe (Mr. Eaton).

The ayes and nays were demanded.

The secretary called the roll and the president announced the result; ayes, 18; nays, 26 as, follows:

YEAS

Boyd,
Campbell,
Eaton,
Estabrook,
Hascall,
Lake,
McCann,
Mason,
Manderson,
Maxwell,
Philpott,
Robinson,
Scofield,
Shaff,
Towle,
Wakeley,
Wilson,
Woolworth,—18.

NAYS.

Abbott,
Ballard,
Curtis,
Gibbs,
Granger,
Gray,
Griggs,
Hinman,
Kenaston,
Kilburn,
Kirkpatrick,
Ley,
Lyon,
Majors,
Moore,
Neligh,
Price,
Reynolds,
Sprague,
Stevenson,
Stewart,
Thummel,
Thomas,
Tisdel,
Vifquain,
Weaver,—26.

ABSENT AND NOT VOTING.

Cassell,	Parchin,
Grenell,	Parker,
Myers,	Speice,
Newsom,	Mr. President.

Leave of Absence.

Mr. MASON. I desire leave of absence until Tuesday afternoon.

Leave was granted.

Mr. BOYD. I ask leave of absence until Monday afternoon.

Leave was granted.

The following asked leave of absence from Saturday noon until Monday afternoon.

Messrs. McCann, Lake, Wilson, Kenaston, Campbell, Hascall, Wakeley, Manderson, Maxwell and Estabrook.

Leave was granted.

Mr. WOOLWORTH. I desire an indefinite leave of absence.

Leave was granted.

Adjournment Again.

Mr. GRIGGS. I move we adjourn until 9 o'clock tomorrow.

Motion agreed to and the convention (at 10 o'clock and 30 minutes) adjourned.

THIRTIETH DAY.

Saturday, July 29, 1871.

The convention met at 9 o'clock a. m., and was called to order by the president.

Prayer.

Prayer was offered by the Chaplin to the convention Rev. L. B. Fifield, as follows:

O, Thou, who from everlasting to everlasting art God. In Thee may we put our trust. To Thee may we give our lives. May we desire that grace, by which man may walk in the way of the Most High God, that when this life is ended we may enter that better life in Heaven. Amen.

Reading of the Journal.

The journal of the last day's proceedings was read and approved.

Mr. HASCALL. Mr. President. I would like to enquire if the standing committee on Education have reported the section back. If so I think it would be well to finish up that article this morning.

Mr. ESTABROOK. I have prepared an amendment to correspond with the action of that special committee, and am ready to submit it to the convention whenever they desire to take it up.

Resolutions—Official Reporters.

Mr. McCANN. Mr. President. I have a resolution.

The secretary read the resolution, as follows:

Resolved, That the president of the convention is hereby authorized to certify to the auditor one day's services to the official reporters of the convention for each night session of this body.

Mr. McCANN. Mr. President. The object of this resolution is to secure to the official reporters pay for night sessions, inasmuch as we have already employed them at a stated sum per day, while we were under the order of ten o'clock in the morning and two o'clock in the afternoon. We then commenced our meetings at nine in the morning instead of ten o'clock, there was an additional hour for which no account was made, and it is found that meetings at night render it impossible for our reporters to make up their work as they did while we were meeting six hours per day. In the constitutional convention of Illinios their debates were reported at the rate of $132 per day; in our convention we are having them reported at the rate of $30 per day. While we are running during the day, with an extra session at night. If this resolution should pass you would be incurring additional expense, but I submit to the convention that it would be better, rather than foregoing the night sessions to incur this expense. The reporters find it impossible to keep up only by working at their notes after we have finally adjourned and must take additional time to complete this work. Rather than give up the night session, thereby saving a half day's per diem of the members of the convention, let us pay these men, and then we can get through.

Mr HINMAN. Does it give an additional day for every night's session.

The secretary read the resolution.

Mr. McCANN. I wrote it one day. The reporters insisting that they would work six hours by daylight, rather than three at night. I am in favor of the whole day, but if they will accept a half day I am in favor of that. I think five nights would carry us near to a close.

Mr. MASON. Mr. President. I do not know any reason why this resolution should pass in favor of these employees of the convention any more than in favor of the clerks and other employees. If they cannot get through let us put in such a day's work as duty shall demand, and let every gentleman take the pay agreed upon.

Mr. J. T. BELL (one of the reporters). Mr. President. May I be allowed to say a few words?

The PRESIDENT. If the convention give leave. (Leave, leave.)

Mr. BELL. Mr. President. When the members of this convention come here at night they simply sit during the session, and then go home, when we report three hours we require fifteen hours to write up. We require five hours for transcribing each hour's short-hand notes. We transscribe till midnight and commence again early in the morning, when you hold day sessions only, but when night sessions are held we come here and report until ten and eleven o'clock, and then are worn out and cannot go home to transcribe.

Mr. PHILPOTT. Mr. President. I am of the opinion that there are no officers in connection with this convention who work so hard as the reporters. I think the laborer is worthy of his hire; and if there are any men entitled to extra pay for extra work it is our reporters. I know they work hard, early and late. I have seen them and so know of what I speak.

Mr. MASON. I desire now and here to say that I am, as far as I am concerned, ready and willing to relieve the reporters from taking anything that I may say. And rather than increase this pay, I stand here to protest, in the name of the people, who have to pay the taxes, and are not able to bear it.

Mr. McCANN. I only offer this resolution simply because I understand and know, that the reporters will be discontinued, if satisfactory arrangements are not made for night sessions. Your rules and the contract made with these gentlemen prescribed certain hours. You impose extra duties and you ought to give extra pay. These gentlemen have not taken down many words of mine during this session and I would prefer that not a single word; nothing more than a vote, shall be taken down. I do not ask the time of these reporters for taking much that I have said, and certainly any thing that I will say. I believe brevity is a principle which ought to be acknowledged by men here. The non-talking members have a few rights which the talking members are bound to respect. Gentlemen of this convention, the time is drawing near to an end when the few members of this convention are going to occupy hour by hour and day by day; increasing the expenses of this convention, burdening the taxpayers of this state needlessly. Now, I am just as willing as anybody has been or can be, to discontinue these reports altogether. When the reports of this convention were provided for, I did not expect we would be here over one-half the time we have been. I was willing for the sake of those who wish to occupy the time of this convention, to incur this expense. Now we have gone thus far I would not like, if we go on with night sessions to have a break, and let the reports be discontinued, therefore we ought to do something with respect to remunerating the reporters.

Mr. ABBOTT. Like the gentleman from Otoe, I have a word to say against the breaking of the chain here. I have not taken up much time. When I do take up time and help to increase the labor of these employees, then I will protest against other expenses. The gentleman from Otoe (Mr. McCann) says it will take us five days to finish this thing by holding night sessions, and that at $30 would be, $150. I will come down with the $3 I receive for one day, and if other gentlemen will do the same we can go along. But when men who pretend to talk about the people being burdened with taxes, and not being able to afford these expenses, and these gentlemen are those who talk the most, I think such remarks come with bad grace. I am willing to pay my share.

Mr. GRIGGS. I would not be willing that the report should be broken off at this stage. I am like the gentleman from Hall (Mr. Abbott), I would be willing to pay the $3 I receive towards the pay of the reporters. I believe the resolution is a just one. I know they do work until midnight. When we quit at night we have our leisure, but these men have to work for hours and then they do not get through more than half. If we had, at the beginning of the session said we did not wish the reports, then it would have been well enough, but not now. As we commenced and are about three-fourths through, the people would ask that we continue the debates through the entire session. I hope the resolution, or something similar, will prevail.

Mr. STEWART. I believe I have not occupied the time of this convention very much, and when the reporters were first employed I felt opposed to it but as they are employed and have taken the speeches of the members, and are compelled to work five or six hours at night to transscribe in order to keep the matter from accumulating on their hands, I for one, think it nothing more than right that they should be paid. I am opposed to spending money as much as any one, but I am in favor of getting through as soon as possible. This is not demagogery. I want the full proceedings, so that we may refer to it hereafter.

Mr. EATON. I would inquire if these reporters received their pay while under adjournment? If so I see no justice in this demand. It is a regular bargain that they should receive $30 per day, and we $3; and there is no more justice in their claiming extra pay than we. I protest against that. If those who want to do the talking are in favor of continuing the reporters let them pay for it. This is the first time I have occupied the time of this convention since I came here.

Mr. MAJORS. I am opposed to the resolution from this consideration—that I am opposed to the night sessions. I think if members would work well during the day that we should be relieved, and I shall vote against the resolution from that fact; and on those grounds I propose to vote against night sessions.

Mr. McCANN. That is just the poinst. My idea is that you save the difference between $30 and $150 per day.

Mr. BALLARD. Mr. President. I wish, sir, in connection with others to say a word with regard to this matter. I was opposed to having any report, but upon mature reflection, I concluded it was best, one reason why I concluded it was best was that perhaps after generations would like to see that record, or in a few years it may become necessary to look over that record and see just what some gentlemen did here. It is possible some one of us is making up a state reputation. Now, sir, as we have commenced making up a journal of the proceedings of this convention, I am opposed to stopping it at this time. We have a record partially made up and for us to stop now, would be, in my opinion, boy's play. These gentlemen have served us faithfully, at figures I considered high, but I know nothing about this kind of business. I am opposed to stopping night sessions, because we don't work well in the day time. Sir, if this convention means to sit in session until the 1st of September I am one of the members that is going to resign and go home. It was expected by the people generally, that from four to six weeks was all the time required to do this work. I am in favor of going right on, and I want the reporters paid for their night work.

Mr. ABBOTT. Mr. President. I think I like the sound of my voice, and Iwould like to speak again, if I can get leave. (Leave, leave.)

I want to say just one word. I think this thing of having night sessons is done to accommodate us. I am unwilling to call upon men who work to accommodate me to do this work for nothing. Now I want to know if there is any gentleman here who will refuse to vote one days pay to these reporters, and thus save five days work, and five days expense to the state, as it is said will be done by having these night sessions continued. A day's pay from each of the members will give the reporters $150 and that is all they ask for the five night sessions. The state will save $630.00 by the transaction.

Mr. MANDERSON. Mr. President. I would like to say one word on this subject, as I was chairman of the committee who employed these gentlemen. The first proposition was that these gentlemen, four of them, would do the work for $40.00 per day. The committee thought that was too much, but upon investigation we found that to be less than regular prices. We afterwards secured these gentlemen at $30.00 per day, and I say that is very cheap. The contract was that they were to work during the day, as we had adopted a rule at that time establishing the hours during which our sessions would be held.

Mr. MAXWELL. I would like to ask the gentleman from Douglas (Mr. Manderson) a question.

Mr. MANDERSON. Go on, sir.

Mr. MAXWELL. Did not you, as chairman of that committee report that these gentlemen would report the debates of this body for $30 per day?

Mr. MANDERSON. Yes sir. That was to be during the session of the convention. Now I am told by these gentlemen, and others who are acquainted with this kind of work, that it will take them from thirty to forty days after the rising of this convention to prepare their manuscript for the printer. For this they will receive no pay. Now I believe my friend from Otoe (Mr. Mason)—if he employed a man to labor on his farm by the day he would not ask him to work at night for nothing. This would be like the carpenter who said, after working his men all day, "let us knock off and play a while and dig cellars by moonlight." (Laughter.)

Mr. MAXWELL. Mr. President. At the time the gentleman made this report to this body I certainly thought it was a high price. I remember the phraseology of the gentleman's report. He stated that he had made arrangements with these gentlemen to report the debates of this body at $30 per day. There was nothing said about night sessions. I am willing to add. Now here we commence our sessions at nine o'clock and hold till twelve, meeting again at two o'clock and holding until six. Now the last two night sessions we met at eight and held until ten. Now we propose to pay for these two hours as much as a day's work. If it is right to pay this extra compensation to these reporters it is right to pay our clerks and our members. During the adjournment of ten or twelve days we have paid these reporters their regular price for working and they have done nothing unless it was writing up their notes. I for one don't object to the expense of reporting the long speeches which have been referred to .

Mr. MASON. Mr. President. I don't propose to discuss this proposition further but wish to say one word. I don't undertake to instruct any gentleman as to what he should say or do in this convention; much less do I permit any gentleman to say what I shall do or when I shall speak. I don't admit the right of my colleague (Mr. McCann) to say who is the working man and who the talking man of this body. It comes, sir, with ill grace. He shall not erect any standard of conduct for me; if he does I shall not recognize it as his right.

Mr. KENASTON. Mr. President. I understand this convention came here for the purpose of making a constitution. It was proposed to pay the members $3.00 per day and when we work at night, we get nothing for it. I see no reason why these reporters, who are hired by the day should not work at night the same as ourselves. The idea has occurred to me that perhaps these gentlemen will have to work 30 days in writing up, but it is evident they considered this in their proposition, when they asked $30 per day.

Mr. WILSON. Mr. President. I move to amend the resolution of the gentleman from Otoe (Mr. McCann) by striking out "one day" and inserting "one-half day."

Mr. EATON. I would like to ask whether, if we vote this extra pay for night sessions, they will be willing to lose the adjournments.

The PRESIDENT. The question is upon the amendment offered by the gentleman from Johnson (Mr. Wilson.)

The PRESIDENT. The question is on the amendment to strike out "one" and insert "one-half."

The ayes and Nays are demanded —secretary call the roll.

The secretary proceeded to call the roll.

Mr. SPRAGUE. (When his name was called said) Mr. President, I am opposed to the resolution, both for the half day and the day, but I will vote to give half instead of the whole day.

Mr. WOOLWORTH. (When his name was called said). Mr. President. I desire to say in this connection I do know for my part that all the reports that have been taken heretofore will be suppressed and never be published. For a good many more reasons than one I vote, no.

Mr. BALLARD. Mr. President, I wish to change my vote, to aye.

The result was announced—ayes, 27; nays, 16,—as follows:

AYES.

Abbott,
Ballard,
Boyd,
Campbell,
Cassell,
Curtis,
Gray,
Griggs,
Hinman,
Kilburn,
Lake,
Ley,
Lyon,
McCann,
Manderson,
Neligh,
Philpott,
Price,
Robinson,
Reynolds,
Scofield,
Sprague,
Stewart,
Thummel,

Towle,
Weaver,
Wilson,—27.

NAYS.

Eaton,
Estabrook,
Granger,
Kenaston,
Kirkpatrick,
Majors,
Mason,
Maxwell,
Moore,
Parchin,
Scofield,
Shaff,
Stevenson,
Thomas,
Tisdel,
Vifquain,
Woolworth,—16.

ABSENT AND NOT VOTING.

Gibbs,
Grenell,
Hascall,
Myers,
Newsom,
Parker,
Speice,
Wakeley,
Mr. President,—9.

So the amendment was agreed to.

The PRESIDENT. The question is on the adoption of the resolution as amended.

The ayes and nays are demanded,—secretary call the roll.

The vote was taken and the result announced; ayes, 21; nays, 22,—as follows:

AYES.

Abbott.
Ballard,
Boyd,
Curtis,
Granger,
Gray,
Griggs,
Hinman,
Kilburn,
Lake,
McCann,
Manderson,
Neligh,
Philpott,
Price,
Reynolds,
Scofield,
Stewart,
Thummel,
Towle,
Wilson,—21.

NAYS.

Campbell,
Cassell,
Eaton,
Estabrook,
Kenaston
Kirkpatrick,
Ley,
Lyon,
Majors,
Mason,,
Maxwell,
Moore.
Parchin,
Robinson,
Shaff,
Sprague,
Stevenson,
Thomas,
Tisdel,
Vifquain,
Weaver,
Woolworth,—22.

ABSENT AND NOT VOTING.

Gibbs,
Grenell,
Hascall,
Myers,
Newsom,
Parker,
Speice,
Wakeley,
Mr. President.—9.

Mr. MASON. Mr. President. I have now, one request that I have to make; that is that from this time forward that no remarks that I shall hereafter make will appear in the reports.

Mr. MANDERSON. Mr. President. I don't think the remarks of the gentleman from Otoe (Mr. Mason) made here belong to him. They are the property of this convention, and I hope the convention will not agree in the gentleman's request.

The secretary read the resolution offered by the gentleman from Saunders (Mr. Kilburn) as follows:

Resolved. That the special committee on the subject of temperance are requested to consider the question of prohibiting the sale of all intoxicating liquors to be used as a beverage.

Provided, that such sale may be authorized within the limits of any county by a majority vote in the county under such regulations and restrictions as may be prescribed by general laws.

Mr. KILBURN. I move the resolution be referred to the special committee on temperance.

The motion was agreed to.

The secretary read the resolution offered by the gentleman from Saline (Mr. Vifquain) as follows:

"Considering the pecuniary pressure at the present time in our western states, and desirous to see our people have fresh courage and increased hopes under our new constitution it is hereby,

Resolved. That the committee on schedule be hereby instructed to insert in their article a section for the purpose of relieving all the tax payers on the annual tax that became delinquent on the first day of May, 1871 of all the interest and penalties upon same, and to extend the time of payment up to the first of May, 1872."

Mr. **VIFQUAIN**. Mr. President. I move to refer this resolution to the committee on schedule.

The motion was agreed to.

Mr. **ESTABROOK**. Mr. President. I think we can finish up the school bill this morning. I move that it be taken up in convention.

The motion was agreed to.

Mr. **ESTABROOK**. I have prepared an amendment, which I move to make section 12 of this bill, it reads as follows:

"The secretary of state, attorney general and commissioner of public lands and buildings shall ex-officio constitute a board of commissioners for the sale, leasing and general management of all lands and funds set apart for educational purposes, and for the investment of school funds in such manner as may be provided by law."

The secretary read the first section, as follows:

Sec. 1. The educational and school fund and lands of this state, shall be under the control and management of the legislature.

Section one was adopted.

The secretary read the next section, as follows:

Sec. 2. All lands, money or other property granted or bequeathed, or in any manner conveyed to this state for educational purposes, shall be used and expended in accordance with the terms of such grant, bequest or conveyance.

Section two was adopted.

The secretary read the next section, as follows:

Sec. 3. The following are hereby declared to be perpetual funds for common school purposes, of which the annual interest or income only can be appropriated, to-wit:

First, such per centum as has been or may hereafter be granted by Congress on the sale of lands in this state.

Second. All moneys arising from the sale or leasing of sections number sixteen and thirty-six in each township of this state, and the lands selected, or that may be selected, in lieu thereof.

Third. The proceeds of all lands that have been or may hereafter be granted to this state where, by the terms and conditions of such grant, the same are not to be otherwise appropriated.

Fourth, The net proceeds of lands and other property and effects, that may accrue to this state by escheat or forfeiture, or from unclaimed dividends or distributive shares of the estates of deceased persons.

Fifth, All moneys, stocks, bonds, lands and other property now belonging to the common school fund.

Sixth, All other grants, gifts and devises that have been or may hereafter be made to this state, and not otherwise appropriated by the terms of the grant, gift or devise, the interest of which said funds, together with all rents of the unsold school lands, and such other means as the legislature may provide, shall be exclusively applied to the following objects, to-wit:

(1.) To the support and maintenance of common schools in each school district in the state, and the purchase of suitable libraries and apparatus therefor.

(2.) Any residue of such funds shall be appropriated to the support and maintenance of academies and normal schools, and schools of an intermediate grade between the common school and the University, and the purchase of suitable libraries and apparatus therefor.

Mr. LAKE. Mr. President. I think there is a mistake in line sixteen. In the copy which I have I find a correction made by myself as follows: The words "arising from," in place of the words "of which said."

The PRESIDENT. The question is on the insertion of the words.

The amendment was agreed to.

The secretary read the next section, as follows:

Sec. 4. The legislature shall by law require that every child of sufficient mental and physical ability, between the ages of eight and sixteen years, unless educated by other means shall in all cases where practicable attend a public school supported by the common school fund, for some definite length of time each year, to be fixed by law, and shall establish a school or schools for the safe keeping, education, employment and reformation of all children under the age of sixteen years who for want of proper parental care or other cause are growing up in mendicacy, ignorance, idleness or vice, which schools shall constitute a part of the system of common schools.

Mr. MAXWELL. Mr. President. I move to strike out section four. I do it for the reason that I think this should be submitted to the people as an independent proposition for their adoption or rejection. It provides the legislature may require compulsory education. While I am in favor of having all children of suitable age attend school, it appears to be better not to insert a section of this kind in our constitution, compelling the people to adopt that or reject the whole constitution. There is another objection to be urged to this section, the taking care of children destitute of proper parental care: This proposes an innovation also. It proposes to take the school funds and establish houses of reformation for children wandering about the streets. I am in favor of the object, but think it should be submitted as a separate proposition. If the people approve of it it will still become a part of the constitution. It might possibly hazard the adoption of this instrument, and I trust it will be submitted as an independent proposition.

Mr. SPRAGUE. Mr. President. I will not discuss the principle contained in this section. I might say I am in favor of it. This matter was discussed in the convention at some length some time ago, and the papers of the state have discussed it pretty thoroughly, and take a position against it, hence we see there is a strong opposition to it in the state. I am opposed to encumbering the constitution with anything that will cause anyone to vote against the adoption of the entire constitution for the purpose of killing any clause they may be opposed to.

Mr. LAKE. Mr. President. I move to amend the proposition of the gentleman from Cass by striking out the words "shall require by law" and insert the words "may by suitable legislation require." Now I hardly think it would be wise to put a clause in the constitution that would frighten anybody. I hardly think it would be best to have this imperative requirement upon this section although I do not see what could be done by the legislature if they should refuse to enact these laws. We might, perhaps, impeach them for disobedience of the injunctions of the constitution. But I think that would hardly be practicable. In order to leave the matter entirely in the hands of the legislature and show to the people of the state what is the sense of the convention and to indicate what perhaps, would be a suitable policy for the state to pursue, but still to leave it entirely within the control of the people and the legislature elected by the people, I propose this amendment. So that the section as amended, will read as follows: "The legislature may, by suitable legislation, require that every child of sufficient mental and physical ability, between the ages of eight and sixteen years, shall attend public schools," etc. Certainly the people of the state will not be frightened into the rejection of the constitution because of a provision which shall be left entirely to their discretion whether it shall be put in force or not—its requirements carried into effect. Therefore I trust that we shall not encumber our constitution with the submission of so many provisions to the people separately from the constitution itself. Put in a form that shall be unobjectionable and let it go before the people as a whole. I am not afraid of the people objecting to a constitution which gives a provision leaving the enforcement of anything made to the legislature, so that they may control and regulate it as they see fit.

Mr. MAXWELL. I move to strike it out and submit it as a separate proposition.

Mr. KIRKPATRICK. The gentleman from Douglas says it is useless he thinks, to encumber the constitution by submitting a separate article. My opinion is that it will not encumber the constitution at all, and I think an objectionable provision may. If this provision shall be found to be objectionable they will not adopt it. I approve of the motion of my colleague (Mr. Maxwell) to strike it out. I desire to enter my protest against inserting such a provision as section four in the constitution. Now, sir, I think the free school system of this state will be an honor and a glory to her. And this school system is superior to that of any other country in the world. I don't except any part of Europe, not even Prussia. I believe, sir, that every child of suitable age ought to be educated, but there are other provisions which I think are even more objectionable. That is the undefined power, but after all the implied power contained in the last portion of the section. The first portion is plain, direct and unambiguous, and means, doubtless, just what it says. It is investing the legislature with power and not only with power, but making it mandatory on the legislature that they shall actually exercise this power unless the children are educated by other means. But the latter part of this section is an ambiguous provision. It proposes the commission of a dangerous power to some agent of the laws of this state; and I think it is very objectionable. It goes on to say, "and may establish schools for the safe keeping, education and employment and reformation of all children of such age who are destitute of proper paternal care, etc." Now, sir, we have had long dissertations upon this particular provision of the section. Gentlemen have argued that it is the duty of the state to take care of the children; but I dissent from the argument that the children are the property of the state. I am not willing to turn the hand of progress back and go to the system of despotic government, and adopt the rule of ancient times. But, sir, it is a dangerous power for another reason. Gentlemen are not agreed upon as to what is "proper parental care." One gentleman argued it was the duty of the state to see that every child had "proper parental care;" ascertain what is proper parental care. And it is said here that the state must really provide proper food or clothing; and it is bound to make such provision. Now, gentlemen, this involves the exercising of a power you never can carry out in the United States. Who is to say what is "proper parental care?" The parent is responsible. But I admit there is dernier resort—that is in the state. The state is bound, most certainly, to afford full sustenance for poor children. I am very sure that the incorporation of such a section will endanger the adoption of the constitution. The gentleman's proposition is fair and right. It will incur no extra expense to submit this separately. I wish to defer for a moment. The indication of the public feeling on this question has developed in the newspaper press. The Cass Democrat, in an editorial a few days ago, took strong exceptions to this section four, and said it would endanger the constitution. The other paper published in our town also objected to the proposition. I claim the privilege of reading an extract from the first named paper, which I mainly adopt After adverting to this section four, giving the items of it, the editor goes on to say:

"We have no desire to discuss this question—in fact, we hardly believe it admits of discussion—but we do desire to enter our protest against placing any such clause as this in the body of the constitution as it is to be submitted to the people, for the simple reason that it would endanger the entire document. If any one wishes to have a fair expression of the views of the people upon this question let the proposition be submitted separately. For ourself, we can say that we are opposed to the clause, because we believe it to be in direct opposition to the principles of republican government. While we think no one will question the fact that education is the great civilizer of the world, and is the foundation stone of republican institutions and self government, yet we have no more right to force education than we have to force religion, which is strictly prohibited by the constitution of the United States. In the intelligence of the masses lies the safety of the nation; but if we attempt to force that intelligence the innate principle of liberty itself rebels against it and thereby we kill the root by endeavoring to increase the growth of the branches. Let our constitution makers and our law makers strengthen the branches of free government by cultivating the root, which is a desire for knowledge and truth. Render every aid possible to the system of education, and we will guarantee that the parents of the country, who as fully appreciate these benefits, as does any member, of the constitution, will not be backward in accepting them, and the men and women of the country will grow in knowledge because they love knowledge, and not because it is attempted to be forced upon them."

Now, sir I simply desire to have this published and submitted. I do think it will be dangerous to embody it in the constitution. There are a few gentlemen now and then who assume to manufacture public opinion. The local papers generally advocate the popular course unless some influences are brought to bear. I hold, sir, in this government, that the proverb, vox populi, vox dei is true.

Mr. ESTABROOK. Mr. President. I sent a copy of this report to every paper I could think of, inviting comments on it, and until some considerable time thereafter I heard no word from these editors but what was highly commendatory. Subsequently these papers have not said a single word against it upon its merits. One of these papers is the Plattsmouth Herald, one is the paper here (the Journal) and the third is the Omaha Herald, with which I have had some difficulty about another matter and the editor seemed to think I thought this proposition the gem of the article, and opposed it of course, because I introduced it. Now nobody claims that these gentlemen will be bought and sold like beef, but sir, is it not true that the state has some kind of interest, or proprietorship in them? How is it that a state can enact laws by which its people are drafted in the military service of the country, unless the state has some sort of interest in them, and as a reciprocal duty to them, the state is bound to protect them wherever they go. One of the proudest claims of our country during the war was the intelligence of its soldiers. That is one difference between this country and the old countries. Why sir, there were tons and tons of mail matter coming from our common soldiers every week, and some of the best letters in the papers came from the lowest soldiers in the ranks of the army. Now do you pretend to say that the state has no interest in the children who are lounging about the country. Why, sir, it has been said here that this was regarded as the crowning glory of the labors of this convention. It is not proposed to incorporate anything that shall be aggressive. It simply proposes to take the little waifs that run about the streets with no one to care for them, and have the state provide for them. There has been some discussion about what shall be "parental authority." Do you remember what the papers, a few days ago, had to say about an affair which occurred in Illinios a short time ago it was shown that a little fellow, ten years old, was sent to the field to work. He said almost with his dying breath, to his little sister that he did not know what his father was whipping him for because he did all the work he could." His father not only whipped him in the field but whipped him all the way home, through the out buildings and into the presence of his mother who had just arisen from her bed of accouchement and then struck him a last blow, which caused him to shut his little eyes to the light of this world. The neighbors gathered together and hung the father. Now, I propose to say that there shall be some power in this state which shall take the little creatures, who come into this world through no will of their own from the power of these such as I have described. How often does the heart bleed to hear the cries of these little ones who are under the control of drunken parents. Now I don't expect to be educated any more, except what I may get from day to day by absorption and while I have no children who require any other parental care than they now have, yet I say thousands and thousands of children are running around our streets who do need this provision.

Mr. ROBINSON. Mr. President. I am not in favor of this section as it now stands but am in favor of striking it out. I will now state a proposition which may sound at this day paradoxical. It is this, that in those countries where the system of compulsory education is adopted there is less learning than in those countries where no such system is in vogue.

Among the lower classes in Germany where this system is followed, there is five times more ignorance than in this country where we have our free common school without compulsory education or any such laws as this. There are more ignorant people, more people with very little education in that country where there is so much learning and where laws have been passed to compel education than there is in this country where there are no such laws. I do not know how that can be explained but it is a fact universally true. There they have the most learned men without doubt, that can be found in any country, the greatest philosophers, the greatest poets, the greatest historians and the greatest mathmeticians, but they stand away up above the people, they talk in a language that is almost a dead language to the people. What is the explanation? They have the compulsory system. Now if this system works well why is it that learning is not generally diffused in that country? In this country no such laws have been adopted, and yet there is a public sentiment prevailing which compels by a stronger force than any statute, every man to send his children to school. It is said we find in our midst a large class of ignorant people. Is that so? It is entirely to the contrary; all the children have some education, and to a greater degree than can be found in any other country. It is not from these laws, from any laws to compel the attendance of children at schools, but from that public sentiment almost undefinable, which compels every man to submit to its force. I would much rather depend upon that I believe, to take the average right through this country, all the states, eastern and western, that there is more learning, taking the aggregate, while we have not so many learned men as they have in other countries, I undertake to say, in the aggregate, there is more knowledge among the people, among what is called the "rag-tag," than is to be found anywhere else. If gentlemen can show any necessity, that any evil is to be remedied by the adoption of any such law, I would not oppose it. It may be it would do no harm, but I am inclined to think its moral effects would be bad, that it would be impossible and impracticable for the Legislature to adopt anything like a high standard of education. They must put it low so that the people without means would not be deprived of the services of their children for a great length of time. I undertake to say the moral effect of any such clause, putting the general standard of education down so low would be bad. Every man would think when he had complied with this law he was done. Every man is desirous of giving his children at least an average education. I am entirely opposed to any such provision, I think it is useless. I believe if children have parents who are able to bestow upon them proper parental care, that they would give them a fair average common education.

Mr. LAKE. Mr. President. For the purpose of relieving the convention of the difficulty it has got into, I withdraw the amendment.

Mr. MASON. (Mr. Mason's speech given to him for correction and not returned—Reporter.)

Mr. NELIGH. Mr. President. I desire to reply to the gentleman from Lancaster (Mr. Robinson.) He said that, in those countries where they have compulsory education, the lower classes, as a rule, do not have proper education. I have had some experience with that class of people in a county that is settled up, to a great extent, by foreign-born settlers. On my return home on this last trip I made it my duty to examine into this subject of compulsory education and I find that universally the German population are in favor of it, and further in all my transactions with these people I never found one of them that could not write his name to a legal paper, but I have found many Americans that could not write their names and I have a number of papers in my possession and looking over them I find probably ten crosses signed, and not one of them signed by a German; and I further state that I have been connected with a board of school officers from the organization of the county of Cuming, and my experience teaches me that it is necessary to compel a portion of the population of this county to send their children to school. I know that in the last two years that I had to go to a teacher and get him to take back children that he had expelled from school—boys fifteen and sixteen years of age, who could not read or write. I believe the gentleman from Otoe (Mr. Mason) in his argument thought if you compelled him to pay taxes for the education of the children of the state, the state had a right to compel these children to go to school. I claim that we have as good a school in our town as any town in the state, but yet I know there are children who run about our streets and do nothing.

Mr. ESTABROOK. Will not the gentleman from Cuming (Mr. Neligh) give way until Monday at 2 o'clock at which time the gentleman can have the floor.

Mr. NELIGH. I am willing.

Mr. ROBINSON. Mr. President. I think we have an order for that very hour.

The PRESIDENT. It is not out of order to set two matters for the same hour.

Adjournment.

Mr. MANDERSON. Mr. President. I move we adjourn until two o'clock Monday.

The ayes and nays being demanded, the secretary proceeded to call the roll.

The President announced the result—ayes, 23; nays, 22,—as follows:

AYES.

Boyd,
Campbell,
Cassell,
Eaton,
Estabrook,
Granger,
Hascall,
Kenaston,
Lake,
McCann,
Mason,
Manderson,
Maxwell,
Moore,
Parchin,
Philpott,
Robinson,
Scofield,
Tisdel,
Towle,
Woolworth,
Wilson,
Mr. President.—23.

NAYS.

Abbott,
Ballard,
Curtis,
Gibbs,
Gray,
Griggs,
Hinman,
Kilburn,
Kirkpatrick,
Ley,
Lyon,
Majors,
Neligh,
Price,
Reynolds,
Shaff,
Sprague,
Stevenson,
Stewart,
Thummel,
Vifquain,
Weaver,—22.

ABSENT AND NOT VOTING.

Grenell,
Myers,
Newsom.
Parker,
Speice,
Thomas,
Wakeley,

So the motion was agreed to, and the convention (at eleven o'clock and fifty-five minutes) adjourned.

THIRTY-FIRST DAY.

Monday, July 31st, 1871.

The convention met at two o'clock and was called to order by the president.

Prayer.

Prayer was offered by the chaplain as follows:

Almighty God, thanks be unto Thy great name for the peace of his day. Unto Thee we look for the welfare and happiness of our country. May we have wise laws, and may we respect Thee with intelligence, with diligence and honor. May our rulers guide the state with right minds and cheerful hearts. May the people accept the high duties of our American citizenship in the sight of God and of man. Amen.

Reading of the Journal.

The journal of the previous day was read and approved.

Mr. GRAY. Mr . President. I move that the judiciary article be now taken up in convention.

Mr. KIRKPATRICK. I would be glad if this report could be laid over for a little while as some of the leading lawyers are absent.

Mr. WAKELEY. I think, Mr. President, that it is altogether wrong to proceed with this judicial article at this time. The chairman is absent, many of the members of the judiciary committee are absent and it is altogether contrary to the practice we have observed throughout this session, to take up these reports in the absence of the chairman, or any considerable number of the members of the committee. I desire there should be a full house when this subject is considered. It is one of the most important articles in the whole of the constitution, one in which I take more interest than I do any other, and I see no need of any undue haste. I do not see why the gentleman from Dodge (Mr. Gray) should press it at this particular time, this article is one that behooves us to go a little slow upon, and I move that the consideration be postponed until tomorrow at two o'clock.

Mr. HASCALL. I heard the chairman of the committee express himself that he was satisfied that the article should be engrossed. I think it has been duly considered in all its bearings. We have gone through it section by section in committee of the whole and in convention, after doing that there were new sections offered and all was said that could be said. If we expect to finish our work in a week or ten days, we must proceed to do something.

Mr. TOWLE. Mr. President. I do know that Judge Lake is anxious to be present at any and all times when this judiciary article may be under consideration, and it is a fact patent to everybody that Judge Lake has scarcely ever been absent from his post of duty, and as he is not here today we could pass over this article until he is present. I do hope that this motion to take up this matter will not prevail.

Mr. KIRKPATRICK. Mr. President. I hope this will be postponed, it is one of the most important articles in the constitution. I know that Judge Mason desires to be here when it is taken up. He cannot come today on account of sickness in his family. It is nothing but courtesy to these eminent men to lay this matter over until tomorrow. I hold that these important matters ought to be left open to the consideration of this convention as long as possible.

Mr. GRAY. Mr. President. What are the facts in this matter? The judiciary article was postponed to this hour, it is a special order, every gentleman spoken of here who is now absent knows the time it will come up for action. If they desired to be here to offer more amendments, why are they not here? What is the use of setting a special order, if not to notify the parties interested so that they might be here? If this had not been made a special order, there might be some reason for postponing action on it. I do not desire to take advantage of any one, nor will I do so willingly. I do hope that the motion to postpone will not prevail. I hope we will be able to finish up this business just as though every gentleman was here. Is the ability of this convention all confined to one or two gentlemen? I never thought so myself. Let us dispose of this and go on with our work as though every member was here. It is not our fault they are not.

Mr. WAKELEY. Mr. President. It is somewhat difficult to account for the exceeding interest of gentlemen to press this article to a vote. Has the gentleman from Dodge (Mr. Gray) any more interest in this amendment than the gentleman from Otoe (Mr. Mason) or my colleague (Mr. Manderson) who is a member of that committee? Has he any more interest in it than I? And why is my honorable colleague (Mr. Hascall) who has just spoken and who is a member of the bar; or not a member but a practicing lawyer, so anxious to proceed with this article? Gentleman say arguments are exhausted on this article. I desire to say that I wish to offer an important amendment to this Judiciary Article; but I am not prepared to do it at this moment. If this is pressed to a vote, I think I can find a way of bringing this before the convention. Mr. President, I say to you and the convention, in all seriousness, that it is well not to go too fast with this judiciary article. I say, sir, that with this ponderous judicial machine, as contemplated in the article now, there will be another tribunal interested in this, and that will be heard on it. I desire, above all things, to have a judiciary article presented to the people of this state, that will be adopted. I think it is wanted at this time. I do not want an article presented which will meet with opposition of the judicial power of this state; which will appear to the people to be expensive. I do not see the object of putting this thing through under whip and spur, or why certain gentlemen should betray all this eagerness and anxiety to put this to a vote and place it beyond the power of amendment. I do not think we are doing justice to the people, or ourselves to crowd this matter through until all gentlemen have had an opportunity to be heard, and submit to this convention such amendments as they see fit. After deliberations on this article were closed at eleven o'clock at night several gentlemen at that time said they wished to make fuller examination on it before it was passed. I know that my reflections have lead me to the conclusion that a very important change should be made before this article is submitted to the people; and I will be prepared for it at two o'clock tomorrow, and would desire that it be postponed until all others who are interested can be here.

Mr. HASCALL. I would ask whether the gentleman who has just spoken has any more interest in this article than the gentleman from Dodge, or any other member of this convention?

Mr. WAKELEY. I have not claimed any more, but I have claimed that gentlemen are away from the convention who are as much interested as my friend.

Mr. HASCALL. This putting on so many airs, and these professions are not in good faith. Not because the gentleman has any superior points to urge. This report is a good one and able in every sense of the word. It was fully considered in the committee of the whole, section by section, and after being satisfactorily fixed in the committee, was reported to the convention and acted on there, and parties who made certain opposition in the committee of the whole could not, at that time, get it suited to their particular notions, offered them in the convention. As I remarked before, the usual way is to offer your propositions and abide by the vote. Propositions were offered and rejected by the committee, they were rediscussed, and out of order And now the gentleman is referring to the same thing again. We are to go on and do right, without parties saying there is a certain tribunal to take the matter in hand. I consider there is a tribunal—the people—and if we follow the dictates of our conscience and do right, that tribunal will endorse us. There is no fear in that tribunal; only some fix up schemes and things not proper, and then there is reason to believe they will refuse to endorse. The gentleman says "why this undue haste?" There has not been undue haste. Rather ask "why this unusual delay?" When, according to the rule of this convention, and it was to be delayed until to day at two o'clock; and made a special order, and now it comes up and, by our rules, would have come up at a previous time, but for our action in delaying it. What is the object in asking for a delay, and the convention drags its slow length along? The tribunal the gentleman referred to never will get a chance to express itself if we proceed in this manner much longer. I do not know what reason the gentleman had to say, in the first instance, that I was a member of the bar, and then correct himself and say I was a lawyer? I believe I am as old a lawyer almost as the gentleman himself. I have practiced eighteen years only. Perhaps I make no profession, and while I am not a practicing member of the bar, I may probably know as much about it as gentlemen who have been practicing for only two or three years. If the gentleman has propositions let him make them now.

Mr. STEWART. I am not a lawyer, but I have some interest in this article, and am in favor of its postponement until tomorrow. I remember that on Friday night the gentleman from Douglas (Mr. Hascall) proposed a new section in regard to the new districts; he was aware many members were opposed to it, but moved the adoption of his amendment and then moved the previous question, and cut off all debate. That is something which has been unheard of in this convention. For these reasons I wish the question to be postponed. As it stands now, I shall vote against its being engrossed. I am willing there should be four districts, and I want them apportioned.

Mr. STEVENSON.— I hope this matter will be postponed. As I understand it there are several gentlemen absent today who cannot probably get here, and are deeply interested in the matter, as much so as any member here, and I am desirous before we adopt anything which is to become a part of our organic law, that every gentleman shall have the right to express himself. I do not believe anything should be rushed through, as some matters have within the past few days. I can read the sentiments of the parties who are trying to rush this through now, just as well as if they were written in large italics on the wall. I want a full expression. Judge Lake, who is chairman of the committee reporting this article, does not wish to see the instrument engrossed as it is, and we owe him the courtesy to wait. I have not heard members of the judiciary committee express themselves particularly upon it. As it has been changed in many respects I am desirous of seeing as many members present as can be before we put it into the constitution.

Mr. THOMAS. Mr. President. I hope this article will be postponed. It is one of the most important articles in the constitution. Now if I thought that the postponement of this article would retard the business of this convention, I perhaps, would be opposed to the postponement but it will not retard it at all. I believe there was another article set for this hour, why not go on and consider that. I know of nothing more important in the constitution than the judiciary article, and I thing it should be fully discussed.

Mr. HASCALL. Mr. President. I expressed myself to the chairman of this committee, Judge Lake, and he said he was satisfied with the report as it now stands.

Mr. STEVENSON. Mr. President. If I am not mistaken Judge Lake was in favor of the postponement.

Mr. SCOFIELD. Mr. President. At the time of the postponement of this article, a previous motion had been made by Judge Lake to have it engrossed, but out of deference to some other gentlemen, he withdrew his motion to have the article engrossed. I know of my own knowledge, that Judge Lake is perfectly satisfied with the article as it is. I hope it will be engrossed and so far disposed of.

The PRESIDENT. The history of this matter is this: Judge Lake made a motion to have the article engrossed, but General Manderson wished to have it postponed and Judge Lake consented.

Mr. McCANN. Mr. President. The statement made by my colleague (Mr. Scofield) agrees with my recollection of the matter. I believe it would be the duty of this convention to postpone the consideration of this article until tomorrow if we were satisfied that the chairman of the committee wished it; but as this question occupied a large share of the attention of this convention for the last week and was so fully discussed, I see no reason for postponing further. We have already occupied a long time in the consideration of the article and to open it up at this convention, and discuss it for one, two or three days more, I don't think we can well afford it. I would be glad if no other amendments are to be offered, that the article be immediately engrossed. It may be, Mr. President, that the article, as it now stands, may not be altogether satisfactory to me. I would be glad if the article be now considered, and that my friend from Douglas (Mr. Wakeley) offer today, his amendment. I feel, Mr. President, that it is time we were dispatching business and get off one article after another, as speedily as possible. I intimated Saturday that the people of the state are looking upon our proceedings with a great deal of interest and even impatience. I, sir, am perusaded that this is satisfactory, and I desire to satisfy the greatest possible number of the people of our state. I wish we may consider this article at once, and dispose of it and proceed with other business.

Mr. KIRKPATRICK. Mr. President. I merely wish to say that I am in favor————

Mr. ESTABROOK. Mr. President. I rise to a point of order. The gentleman from Cass (Mr. Kirkpatrick) has exhausted his privileges on this subject.

Mr. KIRKPATRICK. Mr. President. I have spoken but once, and I don't wish to discuss this question I merely wish to say that this convention cannot take up the section. It is fixed and discussed, and the action of the convention is a finality upon that point.

Mr. MAXWELL. Mr. President. I would extend courtesy to every member of this convention, and did I think that any member who is absent wished to offer any amendment to this article I would favor its postponement. Now this bill has been written out three, several times by the committee and revised carefully; the greater part of three days has been spent upon the bill in the house, and I think not less than two weeks altogether has been spent upon the bill. It is satisfactory to a large majority of the members of the convention. Now, Mr. President, I am anxious to get through—I am anxious to get this constitution framed and go home and attend to my business, and I know that there are others of the same opinion. How can we get through with this when it takes nearly an hour to discuss the question as to whether it shall be taken up. Let us dispose of this business. Let us dispatch it. Now sir, I wish it to be understood that I fear no threats from any quarter. I propose to do my duty and take the chances; and when gentlemen make threats as to "another tribunal," I wish it to be understood that I am not influenced by it.

Mr. WAKELEY. Mr. President. I have a few words to say———

Mr. MAXWELL. Mr. President. I rise to a point of order; the gentleman has spoken twice upon this proposition.

Mr. WAKELEY. I have spoken but once, and as I am the mover of the proposition, I have a right to speak again. Mr. President, there is no need of trepidation. I have said that the people of this state will pass upon our work, and I desire to give them work that they will approve. If this is threatening, then I have threatened—otherwise, I have not. If I believe that they will not approve of a certain system, I have a right to think so, and say so. It is said that the chairman of this committee is satisfied with this; suppose he is, is it of any more importance that the chairman of the committee should be satisfied than that any other member of the convention should be satisfied. Judge Mason and General Manderson both said they were not satisfied with the article, and wished to have the consideration of it postponed. I have said that I should present an amendment, but I am not ready to present it now. I wish as full an attendance as can be. The gentleman across the way (Mr. Hascall) says he knows my motives in offering my amendment. If he knows what my motives are in this case, he knows more about that subject than he does about anything else. (Laughter.)

Mr. ESTABROOK. Mr. President. The question whether Judge Lake is satisfied with this or not don't weigh at all with me. It is a little out of the ordinary rule to take up a report in the absence of the chairman. I know that Judge Lake is not satisfied and I would not like to hurry it —another thing, I don't think the people will be suited with this article. It is more far-reaching than we may at first think in the change that will be effected with it as it now stands, and it may not be so easy to take the people from three judges whose total salaries amount to only $6,000 and the most of that paid from commencement fees, to eight judges with an aggregate salary of $23,000 and no commencement fees. As I understand it, Mr. President, the agony has been over how many judges there should be. It was urged that they should be increased so that every little town, every little prairie dog hole should be visited at least once a year and have their hearts cheered by the presence of one of these honorables. Now let me make this one suggestion by way of a hint; can anybody get up here and tell me why we need a separate supreme court? In all the lately organized states the judiciary has been the same as ours has—what they call the nisi-prius system, that is that the several district judges of the state should meet together at such time as was necessary and pass upon such questions as are submitted to them as the supreme court of the state and I believe their judgments are generally as good as any. We can still have the five judges with this system and we may empower the legislature to create a supreme court in five or ten years if it is necessary. In this way I think we might diminish this thing of expense a little. Now this is only a suggestion and if somebody will prepare something like this I don't think it will run across anybody's pet scheme.

Mr. MAJORS. Mr. President. I hope the postponement will carry from the fact that the gentleman from Lancaster who is not present now, gave notice that he wished to move a reconsideration in one part of this matter.

Mr. SPRAGUE. Mr. President. It seems to me there is a strange inconsistency in the action of these men today, and their action before. If I understand they fear the tribunal before whom this constitution is to come for adoption, and that too on account of expense. Now, sir, the friends of the five district move, were in favor, and did by their votes cut down the salaries by which they saved the people—this dear people, about $7,000 more than if they had allowed the salaries to remain as reported from the committee of the whole.

Mr. STEVENSON. Allow me to correct you, you are $1,500 out of the way.

Mr. SPRAGUE. Five hundred dollars out of the way, let me see if I am. These men were in favor of raising the salary of the supreme judges up to $4,000, while we favored $3,000 and we compromised on $3,500, saving $1,500 there. They wanted to give $3,500 to each of the district judges and the friends of the five districts did cut it down to $2,500 thus saving $5,000 more. I am in favor of getting through with our work that we may go home, and go before this tribunal and let the them pass upon it. If the people see fit to differ with me it is their privilege, but I shall not have a single remorse of conscience for what I have said and done here. I fear the displeasure of this tribunal for continuing this convention into undue length.

Now, sir, the chairman of this committee stated in my presence he had no more amendments he wished to offer, he himself having made the motion that it be engrossed. I hope this convention will now go on and dispose of it so that we may go home.

The PRESIDENT. The question is on postponing until tomorrow at two o'clock.

The ayes and nays were demanded.

The secretary called the roll and the president announced the result: ayes, 22, nays, 19, as follows:

YEAS.

Campbell,
Curtis,
Estabrook,
Griggs,
Kenaston,
Kirkpatrick,
Lyon,
Majors,
Neligh,
Parchin,
Reynolds,
Robinson,
Shaff,
Stevenson,
Stewart,
Thomas,
Tisdel,
Towle,
Vifquain,
Wakeley,
Weaver,
Wilson,—22.

NAYS.

Abbott,
Ballard,
Cassell,
Gibbs,
Granger,
Gray,
Hascall,
Hinman,
Kilburn,
Ley,
McCann,
Maxwell,
Moore,
Philpott,
Price,
Scofield,
Speice,
Thummel.—19.

ABSENT AND NOT VOTING.

Boyd,
Eaton,
Grenell,
Lake,
Mason,
Manderson,
Myers,
Newsom,
Parker,
Woolworth,
Mr. President,—11.

The PRESIDENT. The gentleman from Pawnee (Mr. Stewart) will please take the chair.

The PRESIDENT, pro tempore. The school bill is before the convention, the gentleman from Cuming (Mr. Neligh,) has the floor.

Mr. NELIGH. Mr. President. We have a liberal donation of lands from the general government of nearly 3,000,000 of acres to be used for the educational interests of the state of Nebraska, to educate her youth, and not only those that wish, but all her children, that none should grow up in ignorance and vice; that in future generations the government may be more powerful by the intelligence of its citizens. I claim it is the duty of the state to provide by law for the best use of this liberal donation of the general government, and I cannot see how we can carry out the intentions of the government to a better advantage than in educating every child within the boundaries of the state of Nebraska, than by compelling every child of suitable age to attend the common school. It is claimed that compulsory education will be obnoxious to the people of Nebraska. I cannot see that this section will be obnoxious as it is claimed by some gentlemen of this convention; as most of the people are in favor of education of its children, and there is only a small portion of the inhabitants of this state that this section is intended to reach; only those that let their children grow up in ignorance and vice, and those having orphans in their care. Is there a gentleman on the floor that is not in favor of these unfortunate children of our land receiving a proper education? And this is only the intention of this section. it is not intended for those parents that educate their children at home or at private schools. It is intended only for those that have not the proper care. I claim that the authority that compels you and I to pay out money for the education of the children of our land, is not only to educate those that are willing to avail themselves, but I claim the authority that reaches in my pocket and takes my money for the purpose, and the pretentions it makes for the education of its children, shall make every child under the control of that law attend and receive the benefits of the common school education. I am not willing that the state shall only educate those children that are willing to avail themselves of the benefits of that money that is taken from me for the purpose of education, but I demand that that authority which exercises the right to take the money from you and I has also the right to compel the children of this state who have not the proper parental care to attend the school that it provides for the children of the state, and I shall demand here that the state must and shall provide for a universal education of its children, and especially those unfortunate ones that have parents more beastly than human, and the unfortunate orphans of our state.

Some gentleman said that this section will endanger the constitution, if we retain it and move to strike it out. I disagree with him and I am in favor of its adoption as it now stands.

I am glad to hear some gentlemen speak against oppressive and tyrranical laws, for I hate them, and I love liberty. But, sir, there are many considerations interwoven with this question, the perpetuity of our institutions is connected with the educational interest of the state, and of the nation; such has been the views of the best men of this country and of the present age. Some members have spoken in the committee of the whole when this section was under consideration, of the rights of parents. Now, Mr. President, if parents have rights, children also have rights. I know that sometimes parents have exercised their authority over children against the rights of the children with austerity and severity, you and I know that often parents in the exercise of their parental rights have robbed their offspring of the opportunity of receiving a proper education; and thus they have deprived their children of one of the sacred rights of man. They have by their acts, decided that their children should be "hewers of wood and drawers of water."

Mr. President, when the officer of the law undertakes to arrest some youth for some crime, how few realize that the offence has arisen, not from fault of the youth, but from his ignorance of the laws of the land, under which he lives. His ignorance of the moral obligations which he owes to his fellow men, and to the community, ignorance resulting in most cases from parental neglect. Such a one instead of being a culprit subjected to confinement, imprisonment, punishment or death is deserving our deepest sympathy. Now, Mr. President; here then comes in the right of the state which is superior to all other rights, the right to preserve children of the state from ignorance and vice. If I am not mistaken, very much of the people's money may be saved and expended in the prosecution and conviction of criminals—very much of the people's money may be saved, thereby reducing the burdens of the tax-payers and the security of the community. Now, Mr. President; the question under consideration is to strike out section four and submit it as a separate article to the people. I hope the motion will not prevail, but will be adopted as a part of the constitution. I think it is an important provision for the wellbeing of this state, and that it would conduce to the honor and glory of our nation if every state of this glorious union should adopt this wise and noble principle.

Now, Mr. President; I claim that this section does not involve any disregard of the sacred rights of man, but that it is a measure of protection such as should be afforded to every citizen of this country. It is a measure calculated to give additional security of life, liberty and property. Now, Mr. President; when the children of this state shall have become thoroughly educated, intellectually and morally, instead of being obliged to keep a guard in every town or city, and a watchman at every corner of the street we can lie down in perfect security.

The gentleman from Otoe (Mr. Mason) will get the commission of the Christian mothers, not against the rights of female suffrage but for universal rights. That will be a happy day—a day when we shall shine out as a nation more brightly than any other nation under the sun.

Mr. MAXWELL. Mr. President. This section I propose to strike out. My idea of submitting the constitution is not to put in any controverted matter; any principle or set of principles where it will lead to discussion as to whether they shall be adopted or not. Those questions ought to be submitted as independent propositions. Whatever argument may be used in favor of this, there are many people who do not approve of it. People do not always adopt what is best. If it is true that this will carry by being submitted as an independent proposition, it will become a part of the constitution, and those parties will still secure the benefit. But does not the fact that these parties insist so strongly that it shall go into the constitution, show that they have fears that it will not carry as an independent proposition. They propose to have the constitution carry that measure. We have submitted no independent propositions at present. We have kept out everything that might raise a question as to its adoption. We may differ on minor matters, but when it comes to principles it is different. There is no new theory. The people in olden times thought it was right to encourage the spread of Christianity, and so they established state churches, and in later days they have established state schools. We all know what the result of state churches has been. They cannot live side by side with free churches, as has been demonstrated in many parts of Europe. The census returns show that the number of children growing up in ignorance is decreasing. All through the north today it is almost an impossibility to find any but that can read and also write their name. We have a school fund of $25,000,000 and nothing has to be paid out, and experience shows that these children will be sent to school. And why the necessity of compelling parents to send their children to school, and putting it in the constitution, so that people must vote for the constitution to carry that measure, or vote against it to defeat it. What does this mean?—"to establish schools for the safe keeping, education, employment and reformation of all children destitute of proper parental care." What does that mean? Does it mean officers shall be authorized to pick up every ragged child on the streets; that they shall enter the sanctity of home and say, "You are not taking care of your children, we must take them?" It may bear such a construction. Now, is it policy for us to insert in the body of this instrument a section of that kind. Who is to benefit by the measure? Not the children in the country, not the small towns. You will find them in one or two large towns. Now, Mr. President; I am in favor, in proper cases, of children that are not under proper parental care, of encouraging institutions of this class. But is it proposed to build up these institutions out of the school fund, and keep them out of that fund without limit; and give $100,000 to one place, and another to another place? You must give to all cities alike. Every little town in the state will claim title to that fund. This power ought not to be imposed upon the legislature. A powerful lobby will be instituted, and they might insist on one for this town; and the argument will be that they are authorized to do it by the constitution. If we submit this as an independent proposition we do not imperil the constitution. Parties tell us there will be very little opposition to this measure. I find a very different state of feeling. And if this is submitted as an independent proposition, it is much more liable to carry than if they are asked to swallow it. People want it independent. They will say they do not propose to give any such power to the legislature and compel children to attend school. Many parents don't want to send their children constantly to school. Some have delicate children, and do not want them to attend all the time; and some children are deformed and can not go. The tendency of the age at this time is to overeducate the children, thereby greatly impairing their health. For these reasons I trust this will be submitted as an independent proposition; and I have drawn up one to submit after this is struck out.

Mr. STRICKLAND. When I look at this section, it strikes me it is a matter of concern whether we should adopt it or not. It says "the legislature shall require by law that every child of sufficient mental and physical ability between the ages of eight and sixteen years, unless educated by other means, shall attend public school supported by the common school fund, for some definite length of time each year, etc." What does that mean? It means that you shall force his attendance. How force? You will have to have a police force larger than enough to enforce the Ku Klux bill, it is plain to be seen. It does, as my friend here (Mr. Maxwell) says—it invades the sanctity of the fireside. What law shall say I and my wife are not the natural guardians of our child; and that the officer shall come and say we must send it to school. Suppose a teacher taught a religion that I and my wife did not endorse? "For an indefinite length of time." In a large city it might work, where there are many children without home and learning; but it will not answer in Nebraska, where everybody has plenty to eat and drink, and where everybody is carefully and kindly taken care of. The mother would substantially lose all control over the child, at the time when she ought to have it under her special care. A man might come into my friend Gen. Estabrook's home, and say, "You are teaching something to your children which neither religion nor the Bible sanctions," and drag the children away from home. Gentlemen from Otoe and Cuming say they are taxed, and want to know where the money goes. I want the money appropriated to the specific purpose for which it is intended. Now if that argument was substantial you might say Uncle Sam has been very liberal in providing homesteads for any man who wishes one; in giving thousands of acres for that purpose; and why would you compel a man to go take one? Would you force him? And take a few soldiers and with bayonets behind him, push him out to enjoy these extraordinary privileges that a great nation has held out to him; or they might go into some of your large cities and say, "you have got a loafer here, who hangs around and plays ten cent poker, we will force him to go and take a homestead." Never was a truer sentence uttered in the world than that uttered by my friend from Cass (Mr. Maxwell) that the crowning glory of our country is our system of free education. Now sir, if you get the machinery of this compulsory education so perfect as the mover intends I say a father would be justified in standing at the door with his gun in his hands and keep his children from being taken away and compelled to go to school, and he would have a right to call on his neighbors to assist him in thus defending his rights. But here is another thing standing out in broad daylight. It is proposed to build reformatory institutions, to build up houses of correction where idlers, beggars, thieves and vagabonds are to be gathered together, and our children are to be sent to these institutions, which are to be built out of our school funds. In the city of Rochester, New York, where I was born, there is an institution of this kind, and it is filled with vagabonds and thieves, and these little ones which have been spoken of as running about the streets of our large cities, and are picked up as criminals, and sent there to be corrected. Now, as my friend upon my right (Mr. Maxwell) says, "shall we take this school fund, this great fund of ours, to build penitentiaries with it?" Why, I apprehend that the people will say that this school fund, no matter how large it may be, shall be appropriated to the religious purpose of educating our children, and shall not be used in building houses of correction. If the legislature meant to make an appropriation to build institutions of this kind let them do so and not take our school fund. I regard this as the most extraordinary thing I ever heard of. I dislike to take up the time of the convention, and will not say any more now.

Mr. McCANN. Mr. President. I will occupy but a few moments in the discussion of this question, because, supposing that those who have had charge of this matter had so thoroughly digested and prepared their views in favor of the 4th section of this article, that I have not prepared myself to make a speech, as I did not suppose it would be necessary. I do not now propose to occupy but a moment. For myself, I am in favor of this section number four as it stands. I have had some experience as an educator, in my younger days and I favor the principle of taxing the property of every citizen to the purpose of educating the children of the commonwealth. Now the proposition which was stated by the gentleman from Otoe (Mr. Mason) Saturday—that "if you have the right to tax A for the education of the children of B, you have the right to compel B to send his children to the school sustained by the state during a certain portion of the year," is one that all must admit the force of; but I, Mr. President, do not recognize it as any new principle. I remember that ten years ago, this principle was discussed and enforced in regard to the public schools of Philadelphia and in the state of Pennsylvania, by that able educator, William H. Mann, of Philadelphia. I was surprised to hear, on Saturday, that this principle was a new one. I am satisfied it is right to tax the people of this state to educate every child in the state. If my property shall be taxed to pay for the education of the children of the state, it is to my interests to see that they are all educated, so that they shall not be compelled to make their mark, in signing their names. I do insist that it is not only right but expedient that every child within the state may be educated in all the rudiments of an English education. Now, sir, it is not only necessary, but to the interest of the state that they shall not only be taught reading, writing and arithmetic, but should be taught in all these branches which fit them for the duties of every day life. Now, sir, as to this point of taking the child away from parents and home. Of course it is not intended to invade the sanctity of the home and take the child away from its parents. Is it in the sanctity of home that we find the child preparing for the gallows? Not at all. The sanctity of the home is that place where the child is not only being educated in those things which constitute what we call a common education, but the place where the spiritual interests of the child are being cared for. But then, sir, it is to the interest of the state and humanity to take the child which is not being educated at home, and educate it for a certain length of time. The question has been asked what we mean by "a certain length of time." That certain length of time is to be established by law. Suppose that for seven years the child is compelled to attend school for three months in the year—twenty-one months then will be all the time that child shall have spent in the school room preparing for the avocations of life. But suppose that the law requires but two months each year. I hold, Mr. President, that it is not only for the interest of the state but sir, the state has a right to educate the children within her borders and prepare them for usefulness here, and happiness hereafter. I hope that the remarks of the gentleman from Otoe (Mr. Mason) may be remembered by those who heard them. Many of those considerations he mentioned were urged in Massachusetts, that the state has no interest in the children of its citizens, were made then and discussed. At the time the public schools were inaugurated in Pennsylvania, it was provided that no city should be taxed to keep the public schools of that city open longer than three months in the year. In Pennsylvania at that time it was urged, Mr. President, that no state should provide further than for a session of the public schools more than three months in the year and this limitation was maintained in the Pennsylvania legislature. That was the argument used there and at that time the friends of education had more prejudice to contend with than we have at the present day. We hold it is proper to keep them open ten months. We hold that the property holder should be taxed for the support of the common schools, just as he is taxed for any other public good. Every man throughout the commonwealth is benefited by supporting these schools, and not only that, but also by making it the duty of every parent to educate his children in some way. Not that we will compel a man to educate his children in a college, or any particular school. We insist that every child shall be educated in some school. I care not where—it may be in a denominational school, the convent or the public school; but these little charges of the commonwealth must be educated. Educate them where you please, give the choice to the parents, and do not restrain them, but insist that they shall be educated somewhere. I believe, sir, that this bill is wise in its provisions, section 4 reads, "The legislature shall require that every child of sufficient mental and physical ability," then if not of sufficient mental and physical ability it does not apply—"between the ages of six and sixteen years," which was modified in committee to "eight to sixteen years." And Mr. President, when we look back to the time we spent in the old log school house and went from there to the academy, and some of us from there to the college; when we realize how little we know and how much more we wish to know to fit us for the duties of good citizens, we cannot deny that this twenty-three months to be spent in the common school is little time enough. Again, "unless educated by other means," so it will not interfere with those parents who are educating their own children; but if the child is not being educated at all, it will be apparent there should be a way provided for them and wherever there is such a necessity, instead of sending them to the houses of correction or the poor house, I insist they shall be provided for and sent to the public schools, "in all cases where practicable." I am glad to know that the gentleman from Nemaha made this amendment. For we may find a man and his family, who have gone out upon the prairie to take his homestead and no school within five miles of him. We do not intend to invade the sanctity of that house and take the child from its parents, who perhaps would gladly send it to school if it was practicable,—"for some definite length of time each year, to be fixed by law." Why, sir, is it supposed that the legislature is going to compel the child to be taken away from its home for ten months in the year Not at all. It is not proposed to take the child away from its home at all sir, but to compel the parents to send the child to some school, only so long each year as may be necessary to give the child the education which is requisite for fitting it for life as a citizen of the state. The next part of the section reads: "And shall establish a school or schools for the safe keeping, education and employment, and reformation of all children under sixteen years of age, who are growing up in mendicancy, and ignorance, idleness or vice." Do I hear it hinted around me that there is something hidden in this section, an intent to build up schools for your benefit and mine individually? I take it that those who advocate this system have no such object in view. This seems to me would be the most improbable plan for one having an ulterior object in view. It is not difficult to see how we may provide for all contingencies under such a system and I believe, sir, that the state that shall provide for the compulsory education of its children will gain a reputation that shall last when all other things are swept away. The best interests of the taxpayer lies in the education of those for whom the state so provides and we are all willing to thus be taxed provided all will avail themselves of the opportunity so offered them. We have thus provided these schools and is it not within the province of the state to say to the parent for whose child this provision is made, "you must see to the education of that child, to a certain extent," that it can compete with the greatest number of those with whom it has to do, when it takes its place upon the scene of active life as a citizen of this, or any other state. I regret, sir, that I did not prepare myself to present my views more clearly and more forcibly to urge them upon this convention. I hope, sir, the section will be adopted.

Mr. CAMPBELL. Mr. President. When I came in this afternoon and saw all these long winded persons were absent, I thought we would have a nice time all to ourselves making short speeches. But the gentleman from Otoe (Mr. McCann) deceived me with his speech; he has very ably discussed this question and I was surprised to hear him say that he was sorry he had not prepared himself. I am really glad he had not sir. As it is he has discussed it, even as ably as was done on Saturday by the Chief Justice or any of those very nice servants of the state. It is time that we all think that education is right. We do not believe in the invasion of households to take away children and put them in imprisonment for the sake of education. I think we are hanging too many dead weights to this constitution, which will finally sink it, and a monument will be erected over it. The skulls of all these gentlemen, and mine, will be put in basrelief on them, and on it will be written. "Alas, poor Yorick." Now we have been referred to Germany as an example of forcing children to attend school a certain length of time. That is a monarchial government, this is republican. In Prussia every man is forced to serve in the army for seven years. Are we going to force every man to serve in the army, whether there is war or peace? No sir! In England they tax every person to support the church; you might say with propriety that the saving of a man's soul is more important than his mind, if it is, then they ought to go to Polynesia and gather in every man, from the hedges and highways and force them to come in and be religious. A is taxed to furnish the gospel to B, therefore B ought to be forced to hear the gospel. What kind of an argument is that? Perfectly ridiculous. That is an argument furnished us by the chief justice on Saturday, reiterated today by my colleague from Otoe.

Mr. McCANN. No, sir.

Mr. CAMPBELL. He intimated it to day; it was ten years ago urged in Pennsylvania.

Mr. McCANN. The gentleman is correct, the gospel means glad tidings.

Mr. CAMPBELL. It was advocated ten years ago in the Pennsylvania legislature and is nothing new. Now sir, the proposition is to send out and find children. What is the meaning of that? I suppose whenever you find a little fellow ragged in the streets, catch him up and take him to the reformatory school and keep him there a prisoner. I think the constitution guarantees a trial to every person; if he is guilty of any crime punish him, if not turn him loose. That is what I understand to be the principles and tenets of our government. Because a person happens to be ragged these gentlemen are going to take him and put him in prison, keep him secure, that means imprisonment. I thought of a good many things I would like to say but all have passed from my mind.

Mr. STEVENSON. Mr President. It appears to me that most of the speakers on the opposition side overlook this fact, that it is not to strike out the section entirely, but submit it as a separate article. While I am opposed to the section in every shape, manner and form, yet I am not materially opposed to submitting it to the vote of the people. Now there is not a gentleman on the opposite side of the question that will deny, but what there are a great many objections to be urged against this section throughout the state, and every one of those objections tend to weaken this instrument we have under consideration in this convention and with objections that may be urged to other sections, will defeat this constitution. I hold it is our duty to submit it separately and if there is a majority of the people of this state in favor of it, it becomes a part of the constitution just the same as if it had been adopted in the body of it at first. If these gentlemen are so sanguine that this section will carry, that a majority of the people are in favor of compulsory education, why should they object to submit it separately? I know that there is considerable opposition to the principle contained in this section, throughout the whole of this state. I do not think any man has a right in this free country to say what I might or should do with my children. I have not got any children, gentlemen, and can look at this question squarely and fairly and probably shall not have for some years to come.

Mr. CAMPBELL. You never will have any children. (Laughter.)

Mr. STEVENSON. If I commit any crime, or if my child commits any crime he has a right to a trial before a court of justice, and then he can be punished for it; but you expect to adopt here that I shall be compelled whether I wish to or not, to send my child to a school for a certain length of time each year. I hold that principle is wrong, that it is not founded on any principle of law or justice. You must not think I am opposed to education. I hold that when we tax our people and erect school houses in every hill and dale throughout the state, that we do our duty, and if parents do not send their children to school the state is not to blame for it, but the parents themselves. There are very few parents so forgetful of their duty as not to send their children to school, there are but very few in this state. With regard to these little waifs that stray about our large cities, I will agree with the gentleman from Douglas (Mr. Estabrook) that there are a great many. Those can be supplied by a proper section in this constitution, but I do not think it is right nor just to compel the people to pay taxes to erect reformatory schools throughout every district in the state, which you will have to do if you enforce this article, where it does not apply to but a very few sections throughout the state. It is only in these large towns that there is any need of such an institution; and how does it come to be a necessity there? Is it because there are so many people who have a spirit of idleness, and laziness within their bosom, who will not go out side of these large cities and earn an honest living, but stay in squalidness and filthiness because they want to have the name of living in a city? I think this section is unjust and uncalled for outside of these large cities and towns. I do not think the necessities of the state require it. The American people on the whole are educated at the present day just about as well on the average as any people in the known world, and our school system is progressing; every day there are school houses erected. Everywhere it does not cost a scholar a cent to attend school and can go anywhere he wants. There is not one family out of five hundred outside of these large cities but what send their children to school more or less every year. Now I do not believe that it is necessary to educate a child in regard to books and neglect his education altogether in other respects. As the gentleman from Cass (Mr. Maxwell) told you the tendency of the present age is to educate a child too much, you are spoiling him for other vocations which he is a great deal better fitted to follow that he is to follow a profession, which almost everybody now is trying to get possession of. I wish to read an extract in regard to this. It is called "Head Work and hard work," by James Anthony Froude.

"Our old universities are struggling against these absurdities. Yet, when we look at the work which they, on their side are doing, it is scarcely more satisfactory. A young man going to Oxford learns the same things that were taught there two centuries ago; but, unlike the old scholars, he learns no lessons of poverty along with it. In his three years' course he will have tasted luxuries unknown to him at home, and contracted habits of self-indulgence which make subsequent hardships unbearable; while his antiquated knowledge, such as it is, has fallen out of market; there is no demand for him; he is not sustained by the respect of the world, which finds him ignorant of everything in which it is interested. He is called educated; yet, if circumstances throw him on his own resources, he cannot earn a sixpence for himself. An Oxford education fits a man extremely well for the trade of gentleman. I do not know for what other trade it does fit him as at present constituted. More than one man who has taken high honors there, who has learnt faithfully all that the university undertakes to teach him, has been seen in these late years, breaking stones upon the road in Australia. This was all which he was found to be fit for when brought in contact with the primary realities of things.

"It has become necessary to alter all this; but how and in what direction? If I go into modern model schools, I find first of all the three R's, about which we are all agreed; I find next the old Latin and Greek, which the schools must keep to while the universities confine their honors to these; and then, by way of keeping up with the times, "abridgments," "text-books," "elements," or whatever else they are called, of a mixed multitude of matters, history, physiology, chronology, geology, political economy, and I know not what besides; general knowledge, which in my experience, means general ignorance; stuff arranged admirably for one purpose, and one purpose only—to make a show in examinations. To cram a lad's mind with infinite names of things which he never handled, places which he never saw or will see, statements of facts which he cannot possibly understand, and must remain merely words to him—this, in my opinion, is like loading the stomach with marbles; for bread, giving him a stone.

"It is wonderful what a quantity of things of this kind a quick boy will commit to memory; how smartly he will answer questions; how he will show off in school inspections, and delight the heart of the master. But what has been gained for the boy himself, let him carry this kind of thing as far as he will, if, when he leaves school, he has to make his own living? Lord Brougham once said he hoped a time would come when every man in England would read Bacon. William Cobbett, that you may have heard of, said he would be contented if every man in England would eat bacon. People talk about enlarging the mind. Some years ago I attended a lecture on education in the Free Trade Hall, at Manchester. Seven or eight thousand people were present, and among the speakers was one of the most popular orators of the day. He talked in the usual way of the neglect of past generations, the benighted peasant in whose besotted brain even thought was extinct, and whose sole spiritual instruction was the dull and dubious parson's sermon. Then came the contrasted picture; the broad river of modern discovery flowing through town and hamlet, science shining as an intellectual sun, and knowledge and justice, as her handmaids, redressing the wrongs and healing the miseries of mankind. Then, rapt with inspired frenzy, the musical voice, thrilling with transcendent emotion —"I seem," the orator said, "I seem to hear again the echo of that voice which rolled over the primeval chaos saying, 'Let there be light.' "

"As you may see a breeze pass over standing corn, and every stalk bends and a long wave sweeps across the field, so all that listening multitude swayed and wavered under the words. Yet, in plain prose, what did this gentleman definitely mean? First and foremost, a man has to earn his living, and all the 'ologies will not, of themselves, enable him to earn it. Light! yes, we do want light, but it must be light which will help us work and find food, and clothes, and lodging, for ourselves. A modern school will undoubtedly sharpen the wits of a clever boy. He will go out into the world with the knowledge that there are a great many things in it which it will be highly pleasant to get hold of; able, as yet, to do no one thing for which anybody will pay him, yet bent on pushing himself forward into the pleasant places, somehow. Some intelligent people think this is a promising state of mind, that an ardent desire to better our position is the most powerful incentive that we can feel to energy and industry. A great political economist has defended the existence of luxuriously-living, idle classes, as supplying a motive for exertion to those who are less highly favored. They are like Olympian gods, condescending to show themselves in the Empyrean, and to say to their worshippers: "Make money, money enough, and you and your descendants shall become as we are, and shoot grouse and drink champagne all the days of your lives."

"No doubt this would be highly influential incitement to activity of a sort; only it must be remembered that there are many sorts of activity, and short, smooth cuts to wealth, as well as long, hilly roads. In civilized and artificial communities there are many ways, where fools have money and rogues want it, of effecting a change of possession. The process is at once an intellectual pleasure, extremely rapid, and every way more agreeable than dull mechanical labor. I doubt very much indeed, whether the honesty of the country has been improved by the substitution so generally of mental education for industrial; and the three R's, if no industrial training has gone along with them are apt, as Miss Nightingale observes, to produce a fourth R—of Rascaldom."

Now I take it, Mr. President, that this demonstrates that it is enough for us if we erect school houses throughout the state, and give the people or the children a chance to attend without enforcing that attendance by law. God, when He created us, placed us here as free moral agents. He said like unto this "choose ye whom ye will serve. If God be God serve Him, but if Baal then serve him." Cannot this principle apply just as well to us, the people of this state, as it did to the people of the whole universe? Let us erect school houses; give the children the chance to attend, and if they do not embrace the opportunity, the state is not to blame.

Mr. TOWLE. It appears to me that the true question before the house has been lost sight of. I think the gentleman himself has lost sight of it: The question is whether this proposition shall be submitted separately or embodied in the constitution. It is a question, not of abstract right as to whether the future generations shall be educated or not. I take it that the abstract principles involved have been thoroughly canvassed and discussed, and the members are ready to vote on it either here or at the polls. I take it we are sent here to frame a constitution for the people of this state, and not for the purpose of framing a school law or a system of education which shall, at all hazards, educate the people. But we are here to frame a constitution which shall embrace not only the question of schools, but perhaps a thousand others that are all of great importance to the people of the state. Here is a new idea advanced, a new principle; and it becomes us, like prudent men, and like individuals who should weigh the consequence and see whether it will invite opposition. When a new principle is advocated which we ourselves know, in our daily life, and have every reason to believe, will not meet with the wishes of the people, it appears to me that we should not embody it in the constitution and thereby risk its adoption by the people. The people are represented here, and we find there is a large element here opposed to the adoption of this principle in toto in any respect. If it is a fact as I take it to be from conversation I have heard there is a decided opposition to this proposition. I believe it would be swamped, and the whole instrument sent down with it. If it is right, let the people themselves say so; but do not attempt to carry it by fastening it on to the constitution, but submit it separately. There can be no proposition more true or general than that these new, unusual propositions, should not be placed in the body of the constitution; but submitted separately.

Mr. WEAVER. Mr. President. The question of compulsory education is one with which I do not pretend to be acquainted to any considerable extent, but after listening to the arguments elicited in its favor I am of the opinion that this question is worthy of the widest and most comprehensive discussion—a subject not to be passed by without the most mature and deliberate thought. And more especially when we take into consideration the important fact that under a republican form of government there is safety and prosperity only to the extent of the enlightenment of the people composing the nation—then it is we should weigh well this question as to whether we may not bring about a greater degree of intelligence and by so doing place the rising generation beyond the influence of plotting demagogues. Now sir, I claim there can be no reasonable or sound argument against the proposition that the state has property in the individuals composing the state to the extent of being justifiable in forcing upon them certain duties and compelling them to perform certain acts which from a logical stand point would not only be highly beneficial to the individual himself but redound to the good of the state at large. What respect would be entertained for that nation which when the enemy were battling at their very gate-way would send out their soldiers without their armor to be swept out of existence by the opposing forces, and now I ask the question whether education is not the strong armor with which to fight the battles of life? Whether if it shall once become universal it will not have a tendency to do away with riot, revolution, blood-shed and war? And whether if such be the natural results of enlightenment it would not be expedient, as a prevention of crime and evil, that the state look well to the education of the rising generation.? I ask what have been the causes of the riots that have repeatedly taken place in our great national metropolis? (N. Y.) With one voice you answer they are attributable to ignorance—attributable to the fact that the ignorant masses have not learned to respect the rights of others,—have not learned that their own liberties are safe only when they regard the liberties of all. "When the blind lead the blind they both fall into the ditch," and it is this blind zeal that leads men on to battle—I would ask how it was that a single man kept the whole of the old world in terror until by their united forces he was intercepted at the battle of Waterloo? Was it not because the ignorant and untutored masses of all France, like a pack of blood hounds, were ever ready to follow their unscrupulous leader—enlightenment asks a reason, when action is required, but ignorance follow blindly and submissively.—Do you tell me that in a nation where intelligence was the characteristic of the people the masses would have followed their ambitious leader across the sands of Africa—pressing their way forward to make war against an innocent people until they rested triumphantly beneath the shadows of the stupendous ruins of Luxor, and the mighty Sphinxes and sepulchral monuments of Thebes, or that the same ambitious leader could, where intelligence was universal, have led the uncounted thousands out of their own territory to be slaughtered at the battles of Austerlitz and Borodino? And who will deny that the war of the Crusades, the hundreds of thousands who were slaughtered were sacrifised at the shrine of ignorance and superstition? Individual instances are indeed to numerous to mention, all of which teach the great lesson that enlightenment is the only safeguard against extremes and excesses..

As we gaze abroad and take a comprehensive view of our times it is astonishing to observe the waste of intellect among all classes of the people—the riches of the world are husbanded up with the greatest of care while the inexhaustible treasures of the mind are left to sink into obscurity untouched and unopened—We excavate caverns in the earth to hunt for the precious metals—We make artificial channels to wash the soil for diamonds—We plunder the sky of her feathered tribes—We draw from the earth and sea and sky to increase our material wealth while we neglect the mind which from proper cultivation we might gather an abundant harvest. Thus has it ever been in the eagerness to amass uncounted gold, the masses seem to have forgotten what should have been their highest aim in existence—they grovel in the dust for something to satisfy their animal natures—they strive to appease their passions—they endeavor to pacify their consciences with the gilded bawbles of wealth—they neglect the elements of intellectual and moral greatness for the sordid and perishable things of time—they are like the temples and obelisks of Egypt over which the sands of the desert have been drifting for thousands of years—they are enshrouded in the pall of avarice and ignorance—they are buried beneath the rubbish of wealth—scattered on every hand are intellects that only need arousing when they will arise and shake off the spirit of lethargy which only hinders them from ascending into regions far beyond the gaze of human vision.

It is not a few men shining forth from the multitude that shows forth the intellectual greatness of a nation, but it is the amount of actual knowledge possessed by the masses that renders a nation great, intellectually, morally and physically and now the inquiry arises, how much have we already lost by not having had a more complete educational system and how can we quickest remedy the great evil and speed on the day of universal education when the masses shall show forth in their lives the benefits of expanded and cultivated intellects? I think the only solution is by compulsory education. Who is not impressed with the truthfulness of the adage uttered by the great philosopher when he said "Homines nihil agendo discunt male agare," men by doing nothing learn to do evil—It is not in our district schools—our academies—our seminaries—or our colleges that our young men of the land are being educated in drunkenness, larceny and murder, but it is in the hedges and the by-ways—in gambling shops and houses of prostitution where these crimes have their conception.

In view of these facts which cannot be gainsaid how important is it that our youth of the land not only have a place where they may avail themselves of an education, but that the state look well to the fact that they be placed in these institutions of education that they may grow up into usefulness, instead of becoming subjects for our jails, penitentiaries and poor houses.

The argument advanced by the gentleman from Douglas (Mr. Strickland)—whose education and ability should lead him to take a higher view of the question, is that it will never work here, in this great state of Nebraska. Why, it is the very place for it to work; our large school fund gives us great advantages and furnishes us with the means of carrying the proposition into effect. The gentleman from Cuming (Mr. Stevenson) makes a point,—or tries to by reading from a book. Why, the matter treated of there, has no application to this case at all. That applies to where children are educated in a hot bed manner, without sufficient physical development. I hope this proposition will be inserted in the constitution—go in absolutely, and not by permission. The gentlemen from Cass (Mr. Maxwell) says why not submit it as a separate proposition? Why, there is a great principle involved here, and the section should be incorporated in the constitution when it goes before the people. I am in favor of this course, Mr. President, if the constitution be rejected on that ground, let it be rejected.

Mr. MAXWELL. (To Mr. Weaver.) Did you say let the constitution be defeated on that ground? Now I say, if the constitution will be accepted otherwise, will it not be better to submit this section separately and let it stand on its own merits?

Mr. WEAVER. I would not. I would put it in absolutely. I venture to say that the people of Nebraska will not defeat the constitution on that ground.

Mr. KENASTON. Mr. President. I hope this resolution will not pass. While I am not unwilling to have it submitted as a separate and distinct article, yet I am not willing to have it placed here as a clause in the constitution. More than that—I am opposed to this section anyway. While I am opposed to this section I am not opposed to the educational interests of this state nor of any other state. I believe the people of the state generally, are in favor of every educational interest which can be brought before them. But sir, I have never been of the opinion that this principle of compulsory education was a good one. We have seen its influence brought to bear in the days of our childhood when the rod was brought into force to compel the child to learn; the result was the child did not then progress in his studies as he has since it was abolished. There should not be a law compelling children to be educated. I am willing, and favor having a law, if it can be done, to persuade children, or the parents of children, rather, to educate them. The principle under discussion is impracticable in many respects. There are many parents who are unable to send their children to school; even if there is one within reach, they cannot always send to it. For instance, they may be infirm; they may be aged and they may need the attention of their child even though he be under sixteen years of age. This very section would tend to instruct the child to disregard his parents, and set aside the first law of nature. But we have schools now all around us; they are on every hill side. My impression is that if proper influences are brought to bear upon the parents the children of this state will be educated. But then there are other reasons why this proposition should not pass. This compulsory education is contrary to the spirit of our institutions. The children of this country have been taught, from their earliest recollection, to believe that liberty is the very best thing they can enjoy. From their cradles they have been taught this, and they will not submit to this liberty being taken from them. They will not like the idea of being sent off to some city or town foreign to their homes and there put in school for mendicants, when it is not true of them that they are such. Yet they are placed there as such and people will look upon them and regard them as mendicants, they will look upon them as not being able to have the education and care they need at home and thus not only themselves but their homes are reproached by this system. I will not vote for this section for these reasons. And further the idea of the child being taken from its home, when he is perhaps the stay and support of that home. I remember the gentleman from Otoe (Mr. Mason) speaking of the mother's fond care and prayers and her "angelic" influence being thrown around the child and guarding him from evil influences, the severing of the sacred ties that should bind them to her. The officer of the land comes disregarding these ties in the home circle and snaps them asunder and separates the parent and child. I think this stands opposed to the ideas of our free institutions of American liberty. Yet, sir, I am willing that this question shall go before the people as a separate proposition to be voted on by them.

Mr. GRIGGS. Mr. President. I will not undertake to make a speech, but simply state my views on this subject. I am in favor of compulsory education because I believe it is right. While I believe the parent has rights; yet I do not put it on this basis. I say that the child has a right to an education, and a right that the state must protect and care for, and if the parent refuses to give to that child the education necessary for it, it is the place of the state to step in and give it that necessary education. I will not vote to strike section four out of this article, neither will I vote for it as it stands here, for I do not believe in placing the children of the poor in those schools with mendicants. My idea is to strike out all commencing in the fourth line relating to those schools for mendicants, and if we insert it at all insert it in a separate section; and then I would strike out in the first line the word "shall," and insert "may," Then I think the people will adopt this plan and leave it to the legislature if they find it don't work well to abolish it.

Mr. SPRAGUE. Mr. President. I did not think that I should occupy the floor again on this question——

Mr. LEY. Mr. President. I rise to a point of order, the gentleman has spoken once upon this question.

The PRESIDENT. The gentleman has not spoken on this question, he is in order.

Mr. SPRAGUE. Now, Mr. President, there has considerable been said upon the principle contained in this section on both sides, and I will state what my ideas are, and will promise you I will be brief. My experience has been so far in my progress through this world, that, whether in a question of morals, right or what not, the best way to make an impression on the people, was not by compulsion, but it is always better to reach them by some other means than force. You say to a man you must and shall do so and so; and he will at once rise and say I will not. Now, sir, I know that no one of the members of this convention will be heard to say that education is not good, but that they are in favor of every measure that will educate the great mass of the people of our state. Sir, what is the best means of securing that, is the point which we differ upon. Now, sir, what has been the experience of this country? Why, sir, it is that the great mass of the American people have been educated. Why is that the case? Because we have these public schools—free schools, scattered through the land—The general disposition is to educate every child, and I do not believe there is a father or mother in the state of Nebraska, who would refuse to educate their children if they had the opportunity. If that is so, why place upon the statute books a clause that is objectionable to a great many. Gentlemen get up here and say that they don't believe the people would reject this constitution on account of this section. I have taken pains to enquire what is the opinion of my constituency on this and I am proud to say that I represent a constituency of intelligent men—and I believe they would vote against this constitution with this clause in, and yet not one single man of them would refuse to educate his children with an opportunity within reach. You may send out your police force to inquire where is the child that is neglected in this respect, and they will tell you that he is not found in Saunders county, and yet I tell you there is an opposition to this clause of the constitution that will endanger this constitution. Why then put it in the constitution if at the same time, if it is so good, you can submit it to the people as a separate proposition? Why compel men to vote against the constitution, with this in it, who would otherwise vote for it without this? I think we are getting up a much better constitution than the old one, and I would be glad to see it adopted, for this reason I hope the section will be submitted as an independent proposition, so that the people can adopt or reject, without rejecting the whole constitution. I feel as much interested in the educational interest of the state as any man here and will vote to submit this as an independent proposition.

Mr. ROBINSON. Mr. President. I am opposed to the proposition even as an independent proposition. I know that some gentlemen have talked here that whatever the people want they ought to have. Although I am one of the people, I am not clearly convinced of this. I think it is a dangerous innovation on the old system and shall vote against it in every sense of the word. It strikes me they have referred all the logic that has been used for the past twenty years in regard to government and education both. For my own part Mr. President, I take it those governments are best that govern the least. I believe that to be a primary principle of all governments, and I am opposed to positive legislation in every form, unless those who are in favor of it are able to show there is some present necessity for it. I take it the object of government is purely limited, it should impose restraints, but should never require anything of an individual unless there is positive necessity. I think there would be just as good logic in favor of a general herd law if every farmer in the state had a first class fence around his farm, as there is now for this proposition. Gentlemen have not shown us that their constituents are in a midnight of ignorance. I have been over this state a little and have not seen this darkness that has been talked of. When gentlemen will show me the necessity of introducing a proposition of this kind, compelling the people to send their children to school, I will admit it. There has a great deal been said, principally by the gentlemen from Otoe (Mr. Mason) in regard to the rights of the child. He stated here it was the absolute right of the child to receive an education. I deny it. I take it there is a relation existing between parent and child and that the rights of neither are absolute, they are dependent upon something. The child is not absolutely entitled to an education from a parent; unless it has a parent it cannot be an absolute right, yet that is the kind of logic we are to listen to here.

Mr. McCANN. Allow me to ask a question. Has a child, parent or no parent, a right of natural support, food and clothing?

Mr. ROBINSON. I take it that the child has a right to absolute support in the pursuit of life, liberty and happiness, if it has got any chance to get it. I may meet a child in the street, I am not its parent, it has none, now, sir, if it is the right of that child to support, and support from me, that child has its remedy in a court of justice. How is it going to enforce its right? I say it is not an absolute right of the child; if the child has parents, there arises a duty in the parent to provide its support, and I admit, it is the duty to provide for the education, but by no means is it an absolute right. The gentleman I suppose, desired to go down deep into his Bill of Rights. It is a humbug. I am willing to admit it is very much the right of a child, that it is the bounden duty of the parent to provide education and support, there is a duty on the one side and a right on the other.

Mr. McCANN. I do not understand whether you really admit the child has that inherent right either at the hands of the parent or state.

Mr. ROBINSON. He has no such right. It has a right of support from the parent, but not any absolute right. When a man has an absolute right, he has got that right under all circumstances, and there are no conditions necessary to give him that right. It is a mere matter of definition. Now I wish to pursue this a little further. I admit on the one hand it is the duty of the parent to provide the child with support and education, it is the right of the child to have that support, he has a right to it arising out of the very relation of parent and child, but I stand here for fathers and mothers, I assert they all have some right, I assert that if they are unable to provide a child with support and with education, that the duty ceases. Now you are going to embody in your constitution, in your fundamental law, a provision that the parent shall, for a certain number of years, if he shall be able or unable, he shall send his child to school between the ages of six and sixteen. These parents have brought their children into the world and it is their first duty to provide them with sustenance, food and clothing, that is the first right of the child and the first duty of the parent, far higher than that of education. Now, sir, it may be that under all the circumstances, taking into consideration his property and hard times, that he has done all he can for the child; the child becomes able to assist him on his farm, or in his shop, he desires his assistance and wishes to teach him to earn his livelihood, to teach him, to be a good shoemaker or farmer. Now sir, I undertake to say he has the right to decide for himself, that having supported his children, and being willing to teach them to learn an honest livelihood, he shall not be bound to send them to school unless he sees fit to do so. If he desires to punish himself and send them to school, I hope he will do so. Who shall decide upon his ability but himself? It would be wrong to force him to do it, but there is no necessity for it. Look at your common school system, are there not complaints from intelligent men who know more than we do about this thing, that our common schools are inefficient? How is it in Nebraska? Your houses are miserably provided, miserably taught, everything is miserable about the whole system. Now sir, you had better make these schools fit for the purpose to which they are instituted, before you undertake to force men to send their children. There is great room for improvement, but sir, there is another fact to be looked at. Omaha probably has the best schools in the state, the best common schools, she has a large revenue. I will take Nebraska City. How many scholars have the schools, are they anything like the schools of this town or Illinois? They are completely overcrowded with scholars; they are so badly crowded that they are obliged to build new school houses right along, they have not enough teachers, not enough recitations per day, Until you are able to provide all the children that desire to go to school with good schools and teachers, why in the world did you adopt a provision like this? It is perfectly absurd Perfect your system, raise your money and build your school houses, get this system in running operation, make it as efficient as possible, and I will guarantee that those schools will be full enough, that every child in the neighborhood will go there and be educated. Why sir, it strikes me that the remark, I think it was made by old Job, when some of his friends came to see him, would be applicable to these gentlemen. "Surely you are the people that my wisdom will guide." No man can point to half a dozen constituents, unless it be on the border, who are just as anxious and interested in perfecting our school system as myself. Any such system as this adopted contends inevitably to lower the standard of education in this country. Sure you can institute as a state standard of education a very high grade. If you put it down so that, in your sovereign mercy you put it within reach of every man in the state you must do that to make it universal. If you do that what does your common school system become worth? I will cite Mr. Buckle as an authority. He has probably written as able a work as ever was written. He compares the system of learning in Germany and in this country; and states that the distinctive difference lies in this, that in Germany they have a few very learned men who tower above those of any other nation; that they surpass in philosophy, and in all the sciences every other nation But it is only just a few men. The mass of the people are entirely forgotten, and when you speak of the literature of Germany you speak of the lions, of a very limited class indeed. There is nothing like a liberal diffusion of knowledge in Germany today. He points to the opposite in this country, and says exactly the opposite has taken place. There is no man of towering genius, and no man of very great learning; but every man, speaking generally, has a good liberal education, is acquainted with politics, reads history and the newspapers; while in Germany the common people learn to read and write; but I must say, in all candor, I never found one who could do much more than write his name. There may be some who come here and learn the English language, and become Americanised but, sir, you find them all Germans right from the old country; and I will venture to say you cannot find one in Nebraska who will do much more than read, write and cypher. A gentleman told me that they not only knew that, but that they were posted on the history of the continent generally. On another principle it may be accounted for. It may be they are learned in the school or at the fireside. I am confident that Mr. Buckle's idea is correct. It is admitted he was better posted in the German language than 75 100ths of the Germans. He is better acquainted with its philosophy, its history, its poetry and its sciences. He was a man thoroughly capable to judge. I stated I would vote against it in either form. Therefore, I think it right to divide this question. I will say further that this proposition will not carry, I am certain, in my constituency, notwithstanding it is not a great one. They are intelligent and take the papers, but they are desirous of doing in this matter as they do in all others. Just about as they please. If you can convince them it is for the good of the state to establish such a provision as this then I have no doubt they would vote for it. But so long as they insist that they know as much as I do, they will act for themselves. I think it is insulting the intelligence of this people to undertake to force a system like this upon them. It is unnecessary, and I hope will not be adopted.

Mr. CURTIS. Mr. President. I cannot let this matter pass without raising my voice in favor of compulsory education. I hope the measure will prevail and the state structure we are now erecting may have for its crowning glory that every child of our state shall be educated. Lay not the foundation of this structure on policy or expediency, but dig down to the bed rock of eternal truth and justice and there lay out the structure broad, large and enduring, on this foundation we will rear a structure that shall last not only for this generation, but for generations to come after. God grant that our work may be such that they shall call us blessed. The fault of ignorance lies not generally with the children, but with those who have the care of them, and ignorance and vice stalk in our land through the cupidity, vice and carelessness of such guardians, and we are surrounded by an element of growing ignorance and vice that soon in a great measure will take our places at the ballot boxes and help to wield the destinies of our state. Let us plant this principle in our constitution and we can trust it safely in the hands of those who follow after us. Withhold it and we increase largely that class who are led blindly to the ballot box, and use their dearest right of freemen not knowing what they do, 'Tis a fearful thing, shall it be forever so? Our dearest rights and privileges in the hands of those who can neither read nor write. The ballot blank paper to them but a lever in the hands of the demagogues who use them to overthrow perchance the model republic of the world. Gentlemen, decree that it shall not be so. The wealthy and powerful need not our fostering care, 'tis the weak, the poor, the lowly, who need the strong hand of the government to lift them up, and its strong arm to sustain and make them men. Guard not the entrance to the temple of knowledge with a flaming sword, but throng it with the youth of our land, and in that throng place every child, if it takes the strong arm of law to place and keep them there, let not policy, let not expediency keep us from such a work. We have the right, let us use it. A parent it is true is the natural guardian of a child but he has no right, natural or other, to sink his child in the depths of ignorance and vice, and drag its soul to hell. When we have completed the structure which we are now erecting let us emblazon on it in letters of living light universal educattion is the corner stone of universal liberty, and let us make the stream of knowledge so pure that it shall be a river of life.

Mr. PHILPOTT. Mr. Chairman, I have listened with much interest to the discussion of this question, I have heard the story of the little waifs. I have heard also of the absolute right of the child. I have heard also this idea advanced that if the government taxes us and we pay out our money, we have a right to say that those for whom we pay it, are educated, when we are taxed for this purpose; but I would not base my opinion that it is my duty to vote for this section upon what I have heard, entirely. The government claims the right to draft its citizens into the militia service of the country whenever their services are needed. By what right does the government claim and exercise that authority? To my mind, it is on this principle; that the government has a right to exercise all those means which are necessary to assure its permanency and stability. Now it cannot be denied that the success of a republican government is largely dependent upon the intelligence of the people. Educate the people; educate them all. The more you educate them—the more intelligent they are, and the better able to discharge the duties they owe to the government, and the duties they owe to each other. Now sir, I apprehend that the object of establishing a higher grade of schools is to educate the people so that they may be able to discharge the duties they owe the government. If that be true the government claims that it has a right to tax the people to accomplish that result. I claim sir, that after the people have established a system of schools in order to provide that they may be able to discharge their duties, the government has a right to say that every child in the land shall be educated. It has this right, as much as to draft its citizens into the army and send them out after a few months drill, to meet the enemy, and no one will deny this right. Now, I want to know if the government has no right to prepare its citizens—to prepare its people to perform all the duties which devolve upon them in life. I claim that we have the right and power if we see fit to use it, to compel every child in the land to be educated.

Mr. ROBINSON. (To Mr. Philpott.) Do you think the government is made by the people, or the people made by the government?

Mr. PHILPOTT. I claim that the government is made by the people, but the government is bound to see that the duties which go to insure its stability and permanence, are performed. I believe it has been stated here that there are some portions of the state in which there are no schools organized, that children can attend. I would call attention to this fact, that before the government should demand or force children to attend school, it would be the duty of those having charge of the school matters in the different districts, to provide that schools were organized. This government would never bind parents to send their children to school if there is no school provided. I really felt deeply interested in the class of cases spoken of by the gentleman from Douglas (Mr. Estabrook) I think that what he said is well worthy of our consideration, when we consider that the government is entitled to have these children educated in order to have them do their duty towards that government. I ask you gentlemen to consider these facts, and I believe you will favor the adoption of the fourth section of this article.

Mr. ESTABROOK. Mr. President. It may be true sir, that it is our duty whenever a proposition is presented which excites hostility, to give way, for fear somebody will oppose its passage, but I am in favor of putting such provisions in the constitution as we think should go there, and take the chances. If sir, there is anything in this article which I deem of more importance than another it is this 4th section. It has been said that we have no right to say that the children of this state, the ones for whom this large school fund of ours is provided, shall go to school and be benefited by this fund. Let us suppose a case. A heavy storm occurred last week. We will say that a very important bridge on the road between this place and Omaha, was swept away. All communication between these points is cut off. The county commissioners of this county meet and levy a tax in order to have the bridge put in at once. You are called upon for your share. You ask why the tax is levied and what your proportion is. Upon being told, you put your hand in your pocket and pay it, for you are satisfied that the demand is reasonable. Now, having paid this, what are your rights? It was to rebuild this bridge immediately that you gave this money. The people have demanded that you should make a contribution to defray the expense of putting up this bridge. Now, have you no rights in the premises? Is it not your privilege to demand and insist that this money should be expended at once, for the purpose for which it was contributed? The bridge is an important one to you, and your interests require that it should be rebuilt at once.

Mr. CAMPBELL. But you would not force a man to travel over your bridge would you? (Laughter.)

Mr. ESTABROOK. No sir, but I would force the proper persons to put it up. Now then there are numerous individuals who come from the old countries. They themselves are not in favor of education—it is something they know nothing about. Do you tell me there are but few of them? Go and look along the line of any of our great railroads and you will see thousands and thousands of their names on the pay rolls of these roads. They come and settle in your midst and raise families of children, whom they put to work if they can find work for them to do; if not they are allowed to roam the streets. The fathers of these children write a cross in the middle of their names, and have but little idea of the advantages of educating their children. There are hundreds of these children —grown boys—whom I have in my mind now, traveling about our streets and can neither read nor write and their parents abundantly able to educate them. Do you say the parents have nothing to do in this regard? It is said this plan in Prussia is not a success. Why is it not? Well, they teach the ordinary branches to all the children and then they make military science the main portion of their education. What has been the result during the past year, of France trying to conquer a citizen soldiery brought up under this system of education? Why, after the first battle which promised that victory should follow the course and perch on the banners of the French, and down to the capitulation of Paris the Germans have been successful at every step and have proven that the educated citizen soldiery are able to protect their country. Now sir, let me answer the objection of the gentleman from Gage (Mr. Griggs) and about those persons who are abundantly able in Saunders county to give their children the necessary education. With such this system will have nothing to do, this law will never trouble Saunders county as long as that state of things exists there. About six years ago, in Omaha, a family heard the cry of a child and on searching they found a little babe lying in the wood-shed covered over with a horse blanket, it was taken care of, and it was found out afterwards that a poor deformed girl in the city was the mother of it and she had taken this plan to get rid of it, apparently not caring what should become of it. Of course you could not make that mother support the child for she was unable to support herself. Now in my walks in the city I pass that little boy every day as he stands on the sidewalk and asks me as he does others to give him something and I do it. That little fellow standing there begging for the necessities of life, suggested to me that the state owes something to him and all such. The mother of that child married a rough fellow who beats her nearly to death. Don't it occur to you, Mr. President, that that child is already being educated and he is only one of of a very large class in our state; and by whom is he being educated? Do you tell me the state does not owe him an education? I tell you that the state is already educating him—for what? It is educating him for the state's prison or the gallows. It is impossible that he can go on begging for twenty-one years and not become an inmate of the state's prison. Shame and neglect will soon educate him to crime. Can you compel the parents of that child to educate him? Why, sir, that home today is a drunken brawl where he is learning nothing but crime, and they never think of giving him any other education. Now let me ask, if you please, what it is costing the state to educate this scholar? What has it cost to educate all those who are today in the boarding school of the state just over to the south of here? (the state's prison.) Again, a positive case has been enacted since we have been sitting on this floor. What is it? A man wants his little boy to do more than he is able to do, as a pretence and because the boy cannot do it he takes a black-snake—Now think of one phrase in this section—"proper parental care."—He stands that little fellow upon the hot cook stove until the stench was so offensive from the burning flesh that the little sister had to open the door,—Is that proper parental care? Have you nothing to do in such a case? Please turn to any law in your state that will apply to such a case, any law that will take that child away from such brutal treatment. The father says he must work—and the little fellow, says to his sister in pleading tones "I don't see why father whips me, for I have worked all I can." But the father not satisfied with whipping him through all the out houses, whips him into his mother's bed room and into the presence of the mother, who but a few days before had passed through the pains of accouchement and there administered the last blow that caused that little fellow to shut his eyes upon this world of sin and wretchedness. If there is a way to release that little creature, in this state I don't know where to find it. This is an exceptional case, it is true, and this is an exceptional remedy. Who now should educate and care for such a child? Should we sit supinely by and say to the parent that he can do as he pleases—and this is not the only case. I can take you to just such cases in the city of Omaha today, and sir, I was conversing with a gentleman today who lives in a small town in our state, who says there are several such cases in his town. I will make another suggestion right here, you ask what is the right of the parents? I will answer, the little child did not bring himself into the world, and he is not to blame for being here, but being here entirely helpless there is no question but that the parents owe him food, and we say the parents must provide for him; but suppose they won't, suppose they cannot clothe him, then the state must. Now then, why do you levy all these taxes, amounting to between $70,000 and $80,000 a year for schools, if it was not done to educate that child and to make him a useful citizen and an honor instead of a disgrace to the state?

Mr. President, I did not intend to say so much about this, had it not been for the opposition that has been raised against it. Let us see what there is here to break bones and cause so much uneasiness. First let me say I am surprised to know that my friend from Otoe (Mr. Campbell) is going back on us; the first intimation I had of it was today when he made this very able and eloquent speech. "The legislature shall require by law that every child of sufficient mental and physical ability." Does that compel the child to go to school directly. What is next? Why it is said everybody in Saunders county send their children to school. I am glad to hear it my friends, and in Saunders county the provision has no application at all. Why? "Between the ages of six and sixteen years unless educated by other means." I think I understood you to say that in Saunders county they were educated by other means, everybody sends his child to school there, consequently this provision will not apply there. I think there is some sentiment in the Catholic church that precludes them from sending their children to ordinary schools. There is no need there should be any fear here, because there is ample provisions made.. Of course they shall see to it that these children are educated in their own way, at their own school; there is nothing like religion in it. The last clause says "no system shall be regulated by a religious system." Be he Catholic, Gentile, Jew, Greek or Chinaman so that he educates his child in his own way, however he may be educated, this law has no operation upon him, sends his child to school there conse- as I said before, it is only made for exceptional cases. There it goes on to say they may establish schools for the safe keeping of children without homes. Some gentleman says that looks like putting in prison. There is another class to which I will call your attention, who are pretty numerous right exactly in the neighborhood where my friend the president lives; they are very often in the court calendar, they have been repeatedly there and repeatedly dismissed when they have committed offenses, because the court could do nothing whatever with them; they are too young to send to jail and run about the streets. There is not only one but I could name six or seven families, respectable families too. They have been so brought up that there is no moral constraint upon them. How is the state educating them? So soon as they are old enough they become residents in yonder penitentiary, and the only reason some of them are not there now is simply because they are not sixteen years old. Why, says one, don't you put this into the penitentiary clause? I will tell you why. If this did savor or smack of the penitentiary, do you not see what the consequence would be? Keep a child there until he is sixteen and you dismiss him a penitentiary bird in disgrace. No man goes there but has a smell of the penitentiary about him for ever after. Here we have provided against it. We have made a place where it is to be safely kept and well taught, and when the criminal boy, or juvenile delinquent shall have graduated from it he graduates with no odor of criminality about him. He has been well taught, well raised, and simply graduates at the school and gains his diploma. He is not among the thieves, but graduates there as from any other school. The school committee spent days and days studying this question, and if anybody can fix a better scheme, they can have my vote. If you can adopt a better scheme by which you shall correct the errors, and at the same time save them from the consequences and stains of vice and criminality, I would have you do it. I have conversed with many people on this subject, and I tell you there is no organized opposition to it, but if any one thing has met with joyous approbation every where it is this section four of this article. I know it——

Mr. MAXWELL. If there is no opposition to this, why not submit it as an independent proposition.

Mr. ESTABROOK. Why don't you submit the entire educational article? why not let the legislative or the *judicial article* as a separate proposition.

Mr. MAXWELL. There is nothing new in that.

Mr. ESTABROOK. There is something decidedly new for this state.

Mr. MAXWELL. What is that?

Mr. ESTABROOK. Eight judges instead of three, I think that is decidedly new.

Mr. MAXWELL. You voted for a high salary.

Mr. ESTABROOK. No sir, I voted for $2,500. Let me call attention to the method by which I ascertained the condition of public sentiment. I sent out these articles everywhere and received responses. I was met in various places and congratulated on presenting something so much needed as this. If we say nothing about it to be sure it is possible the legislature might provide for these cases. How is that? Without this scheme is placed in this article and made a part of the common school system, all the funds will be appropriated in another direction. Not a dollar of the fund in any quarter, unless you make grave charges, could be appropriated to this class of children of the state, unless you make it a part of the common school fund. Gentlemen say do not drag that down, do not mix that with crime. How will you do it? In what way can you do it? We fix it here so that it shall save the child. We educate him, constrain him, so far as it is necessary, under and by virtue of the power given to the state by the common school law. Not as wardens of the penitentiary do we hold and constrain him, simply as officers having in charge funds and the interests of education in Nebraska. Why appropriate a portion of the common school fund to this? I will tell you. In the first place, according to the law as it now stands, all fines arising under the penal laws, and all license money paid for the sale of whiskey, which lies at the bottom of most of this trouble, they all go to the school fund of the county, not of the state. Take all these funds levied and collected before police magistrates and justices and all the license money, pay them into the school treasury of the county. We suppose this system will continue, and in addition to the funds which shall arise from the sale of the sixteenth and thirty-sixth sections, there will be superadded to it these funds arising from fines and license money. If you are going to set apart a portion of the public funds for the education of this peculiar class of citizens, can you imagine one more appropriate than these I have named? Is there a more appropriate fund that could be set aside to take care of your little waifs and vagabonds, than the funds that shall arise from the licenses for the sale of whiskey which has made this necessary? There was one day when I was home two weeks ago, two little girls came to me crying as though their hearts would break, one about eight years old, and the other ten. They lived in my neighborhood and knew that I held the honorable position of justice of the peace in the sixth ward of Omaha, and knew therefore that I might possibly have something to do in the way of taking care of those who could not take care of themselves. So they said, "Mr. Estabrook, won't you please go and put my father in jail," and begged and besought me to do it. The request was of such an extraordinary character that I went and enquired into it, and there I saw a drunken man, not a very common sight, simply a drunken man, who had got a devil in him in consequence, the devil of intoxication. The mother was earning enough to take care of her family, was willing to do it if the father would only leave them alone. "But he so often," she said, in his presence, "has got his pay for working on the postoffice, gone and got drunk, spent his money and come home and turned me and the children out of doors." That man has been made a drunken beast and brute; and there are two children, who, if it were not for the mother, would be absolute beggars at the mercy of the people, and this system would take care of them, and the money that had been paid for the license to justify the selling of the whiskey to that drunken, bruted man, to pay for the education. I propose to see they are sent to school, or if they are left beggars, that there shall be some authority to take them tenderly, not roughly as you would a criminal, but tenderly, carefully, and exercise a guardian, fatherly control over them. Don't you all recall hundreds of such instances? What is to become of those girls, I ask my friend from Douglas.

Mr. STRICKLAND. I would have a guardian appointed by the court.

Mr. ESTABROOK. You would turn them entirely away from care.

Mr. STRICKLAND. I would have a good man like Gen. Estabrook to attend to them.

Mr. ESTABROOK. Gen. Estabrook don't want it. He has not the money to do it. The town should take them. And you show me the paragraph in your laws which provides for that. This proposes to take the mendicant, and the vagabond and the vagrant, which the people own, and for which you propose the people shall pay taxes; and not only take care of and provide for them, but to impart the necessary education.

Mr. ROBINSON. Does not this also provide that every other child as well as mendican——

Mr. ESTABROOK. Yes. All who have sufficient physical, mental ability. We have a sufficient fund to take care of these waifs and we say we shall do it. We say that, instead of producing a record like New Hampshire did, that the proportion of those who can neither read or write, has grown greater and greater. Have you no sensibility when you look at your own record, and see that a certain portion of the population were not able to read and write? Would it not be a nice thing to find a number of children in the state—

Adjournment.

Mr. GRIGGS. I would like to ask the gentleman to allow me to make a motion to adjourn until tomorrow morning at eight o'clock, and that then he shall have the floor.

Mr. ROBINSON. I move to amend by making it eight o'clock this evening.

Mr. CASSELL. I move to make it nine tomorrow evening.

The convention divided and the motion was not agreed to.

Mr. ROBINSON. I would like to ask a question. When we engaged these gentlemen to report the proceedings of this convention our rules said we should adjourn from twelve till two and from six till ten. We contracted with them under those hours. Are we going to impose extra duties upon them and not allow them anything? I want gentlemen to take this thing in hand——

Mr. KIRKPATRICK. I deny that this convention did decide anything of the kind.

Mr. ABBOTT. I respectfully submit to the gentlemen of this convention that these gentlemen are entitled by their contracts to pay for night sessions. I hope they will be remunerated.

Mr. STRICKLAND. Gentlemen can work tonight whether the reporters work or not. We need only have our votes recorded; why not finish this? We can gain a half a day tonight.

Mr. ESTABROOK. You are not going on without reporters, are you?

Mr. McCANN. Just the question I raised on Saturday morning.

Adjournment Again.

The convention divided and the motion to adjourn until eight o'clock tomorrow morning was not agreed to.

Mr. STRICKLAND. I move we take a recess until eight o'clock this evening; and that the gentleman from Douglas (Gen. Estabrook) have the floor at that hour.

Mr. KIRKPATRICK. I wish to be excused from being here tonight. There is so much noise made and little dignity observed, and I am opposed to night sessions.

Mr. McCANN. I move to adjourn until eight and a half tomorrow morning.

The CHAIRMAN. The motion is not in order.

Mr. ESTABROOK. I take an appeal from the decision of the chair, if this is his decision.

Mr. MOORE. I move we adjourn till seven o'clock in the morning.

Mr. GRAY. These motions are not in order. There is one before the house and until that is disposed of there is no other in order.

Mr. MOORE. I move an amendment that the time be extended until seven o'clock tomorrow morning.

The CHAIRMAN. The motion to adjourn till seven in the morning has precedence.

The convention divided and the motion was not agreed to.

Mr. LEY. I move we adjourn until eight this evening.

The convention divided and the motion was not agreed to.

Mr. WEAVER. I move we adjourn until half past eight tomorrow morning.

Mr. STRICKLAND. It seems the great difficulty in this matter is these reporters.

The convention divided and the motion was agreed to.

So the convention, (at six o'clock and thirty-five minutes) adjourned.

THIRTY-SECOND DAY.

Tuesday, July 1, 1871.

The convention met at eight o'clock and thirty minutes and was called to order by the president.

Prayer.

Prayer was offered by the chaplain, as follows:

"Our Father, which art in heaven, lead the convention today, we beseech Thee. With reliance upon a Divine wisdom. May they who sit here, seek justice and truth. Move them, to this we pray. Forgive us our sins, and give unto us all a good of heaven. Amen.

Reading of Journal.

The journal of the last day was read and approved.

Leave of Absence.

Mr. CURTIS. Mr. President. I ask leave of absence for my colleague Mr. Stewart on account of sickness.

Leave granted NEM. CON.

Mr. ESTABROOOK. I ask leave of absence until tomorrow noon for Judge Lake.

Leave granted NEM. CON.

Special Orders.

The PRESIDENT. The special order for the hour is upon the motion of the gentleman from Cass, to strike out section four of the report of the committee on education, school funds and lands. The gentleman from Douglas, (Mr. Estabrook) has the floor.

Mr. ESTABROOK. Mr. President. I had nearly concluded yesterday, when I was stopped, all I intended to say on this subject. And it remains for me now to say a few words to the proposition which was under consideration: It is that its main features and designs may not be lost sight of. It may be a new proposition as a provision in constitutional law; and as being new, and a proposition to make it a part of the fundamental law, it may excite, somewhat, the distrust of the tender-footed and doubting. It may not commend itself to those whose attention has not been turned in that direction. But it seems that in reading over a few lines only of which the proposal consists, there can be no question as to its significance or propriety. In a few words, it proposes to single out a few, in comparison, I admit of the children of the country; those who have been thrown upon the world without their knowledge or consent or design—those who are unwelcome birds into this vale of tears; those who are so unfortunate as not to have those to care for them or give them the ordinary privileges and advantages of civilization. I come then, sir, with no formal address in their behalf. I desire to use no studied phraseology in the advocacy of a matter of this kind. If I can utter a few earnest words from the depths of an honest heart in this regard; on behalf of the juvenile vagrants, and the infantile vagabonds of the land, I shall feel I have done my duty in the premises. There are those in abundance who will advocate the cause of the rich and shudder at the idea that you should give as much as one penny for those who are properly cared for, the children of the rich and well-to-do; the facility for aiding them into developing of the immortal parts within them; but who shrink at the proposition that a portion of this immense bequest should be paid to redeem from vagrancy the waifs on our public streets and alleys. Aye, sir, it seems difficult to turn the minds of gentlemen, some of them, to the contemplation that here are a class who are being educated for some destiny; but who pronounce some condemnation on them and send them to our penitentiary in yonder valley.. No contemplation to provide those who should pronounce their doom upon them to finally consign them, but there is danger, when it is proposed to furnish somewhat of the "ounce of prevention" which is said to be worth a "pound of cure." It is urged here that the criminal business throughout the country is on the increase. So, perhaps, it is and will be unless we adopt some means of preventing it. By this proposition it is proposed, merely, to spend a small portion of the school fund for the bringing up properly of these children who will, otherwise swing at the end of a rope, perhaps. Sir, it has been urged here by gentlemen—and I believe it was a part of the speech of my learned friend from Otoe (Mr. Campbell) that there was danger that the public funds would be squandered. Why, sir, my reply to all such arguments is, that while such as you and I will care for our offspring whether we have the aid of a public fund or not, it is our duty to pick up these little unfortunates who have been hardly dealt with by fortune, but who yet have in them the elements of manhood. It will pay us to spend a portion of our school fund in raising these little waifs and placing them in position to become respectable members of society. If need be I would expend every dollar of the fund in the education of these children, leaving the others to be cared for by parental authority. I am in earnest about this thing and it amazes me to see the opposition there is to this provision for taking care of the foundling. We don't propose to do anything with the children of the rich and powerful. We propose to take a portion of the public bounty and bestow it upon the poor waifs who have had an unwelcome birth into this world. It is said that the constitution cannot be accepted with this provision in it—that the people of this great state of Nebraska will reject our constitution simply because it contains this humane, benevolent provision? I wonder if this be true. In talking about this thing with my good old friend here (Mr. Campbell) he tells me a story as an illustration. It is of two doctors, one of whom was an educated physician and the other was a quack. The educated doctor found his rival had plenty to do, while his own business was falling off. He inquired of the quack how this was, "you have plenty of business, while I have nothing to do." The quack replied, "come and sit where I tell you and at night tell me what you have seen." The doctor did so, and told the quack he had seen nothing all day but two philosophers. The crowd passed by all day long, and seemed not to take time to think and only these two stopped to speak to him. "Well," says the quack, "that represents our success in life; you go with the two philosophers and have but little company; while I go with the crowd who do not stop to think." I think this will apply here, for I think the majority who oppose this proposition do not stop to think. I may be mistaken in my views of this proposition, Mr. President, but I know that I for one would do all I can to bring out the latent power which lies in these children, as much sir, as in the breast of yours or my offspring. My colleague has proposed to strike out the mandatory words and leave it optional and discretionary with the legislature to carry this proposition into effect, and I am willing this should be done, if it is thought best. Then if the people of Nebraska propose to let these children alone to take care of themselves, I wish to sell out and leave the state. Under our present statutes there is nothing which will apply to these little ones who run about our streets—not even juvenile criminals; you must not let them run at large.

I would not expel this proposition from the constitution proper; I would leave it as suggested, to leave it to the legislature that they may use their own judgment in this matter. On the other hand I admit there may be something favorable in the idea of leaving it to a vote of the people. But there is this objection to this course; it indicates and carries with it a degree of doubt as to whether the measure is politic, and upon that point, I for one have no doubt nor do my constituents, with but few exceptions. Do you know Mr. President, that we have among us religious bigots who are opposed to our free school system? They believe that children should be educated in a certain religion and this state does not propose to allow religious matters to become mixed up with our public schools, they object to them I know that, while it may be true that there are some who would oppose it, I know a large proportion of my constituents will favor the proposition. But of course if the section is submitted separately, it will put the friends of the measure upon dry goods boxes. It will challenge debate and attract public attention. But it seems to me it is carrying with it doubt to submit it in this way. But if it is left to the legislature to carry this proposition into effect, it should be left with an appropriation of funds to do it with. I suppose the legislature will have plenty to do with this fund and if we don't put this in the constitution the funds will be disposed of otherwise. It is for the convention to say which of the two courses proposed for the disposition of this section shall be adopted.

Mr. WILSON. Mr. President. It seems to me this thing is going too far. We are using the people's time for purposes that are of no use at all. The gentleman who spoke last has exhausted two hours and forty minutes to no purpose, therefore I move the previous question..

The PRESIDENT. The gentleman who made the motion to strike out the section, has spoken but once.

Mr. MOORE. Mr. President. There is a gentleman here—Mr. Vifquain—who has prepared a written argument on this question. It is short, and I think he should be allowed the privilege of reading it. ("Leave, leave.")

Mr. VIFQUAIN. Mr. President. I desire to say a word in this matter, but first of all, let me apologize for having written my observations on this subject. I have done so for two reasons, first because it is a subject that must be carefully considered and second, because my familiarity with the American language is not sufficient to follow my ideas as they flash to my mind in my native dialect. I am in favor of the proposition, Mr. President, not because the Germans have defeated the French, some one tried to make me believe yesterday. No, sir, for I do not believe in that defeat as being right but because section four seems to me to be just, and by the by, as allusion has been made to the recent defeat of the French (may God bless them). I desire to say that it was not because the Germans were better educated. The secret of the victory was in revenge. You have not forgotten the victories of the Great Napoleon, and the dishonor of Sedan can never tarnish the glory of Marengo, the Pyramids, Austerlitz and the Moskawa. These legions taken from France whenever and wherever that might be, were led to victory because there was some one that could lead them. Napoleon did not care if the legions arrayed against him were taken out of the universities of Heidleberg, Gottingen, Berlin or Dusseldorf, Education in the masses had nothing to do with it, as long as Napoleon was there. His victories sir, were destiny, so was his fall at Waterloo. Social philosophy, Mr. President, teaches that every country contains A plus B, not A who pays a tax and B who pockets it; by A plus B, I mean the man of action plus the man of thought , these two multiplied one by the other gives the glory of the times; that man Luther plus Shakespeare. Richelieu plus Corneille, Cromwell plus Milton, Napoleon plus Napoleon, for in himself was contained the man of action and the man of thought of his country. Napoleon was a national unity so to speak! But to return to this subject, the question to be decided is, shall we or shall we not have compulsory education. I am glad to see opposition to the measure, for it will give us who are in favor of it occasion to show the benefits that will arise out of the same. Some members raise objection because they say it is unbecoming in a country like ours, to force people to get their children educated. Strange indeed, that such an objection should be made, for it is just as criminal for a man to keep the soul of a child in the darkness of ignorance as it is for him to cruelly and brutal-ly abuse him. More so I dare say. Yet does the law of the land allow one to unjustly abuse a child? Does any one in this convention complain of this law? No sir, and yet we hear in this convention some gentlemen say that such a proposition as compulsory education is nothing else but coercion, oppression. Coercion indeed; well I am in favor of coercion. Then the gentleman from Douglas (Gen. Strickland) told us in a very few plain words yesterday that he would take his gun and shoot any man that would come and assault the sanctity of his home, upon this proposition. Well I have nothing to say against such a strong argument except this, that when Gen. Strickland or any other man will resist the laws of the land I will be one of the boys that will take my gun (for I have a gun somewhere too) and I will go to his house and insult his own sanctity and whip him and shoot him if necessary, just as he and I have done with some other rebels not very long ago. This proposition does not intend to force a man to send his children to a school as long as he takes proper care that they are educated under his own supervision, whenever and in whatever way that may be. No. sir, that is not the proposition, the proposition is this, (using the sweet language of the gentleman from Douglas, (Mr. Estabrook) to take up this little waif, this little stray running at large into the paths of ignorance, which is bound sooner or later to conduct him into the highway of crime, to tenderly care for him until his mind is so moulded as to justify his presence in society, and I for one call this a sacred mission. Sacred indeed, three times sacred, for in the growing generation is the hope and welfare of the future. Does any one pretend to say that our proposition is an abuse? I will suppose it is, whom does it abuse? Those who are deaf to all natural feelings; he who forgets the mission given to man, by his God, when that man becomes a father, him who uses his sexual feelings for the sole sake so to speak, to throw into society increased corruption or increased miseries. He is the one whom this proposition abuses and where is the man in this convention, who can conscientiously call it an abuse? Perhaps they will also call it an abuse upon our freedom, upon our sanctity, to levy a tax upon us, to build states prisons, into which we are to be confined if we become criminals, and where do these criminals come from? Why, ninety-nine one hundreths of them owe their misfortune to the criminal carelessness of a parent. And I am somewhat surprised to have heard the remarks of the gentleman from Lancaster (Mr. Robinson). Does he expect every German to be a Schiller or a Goethe? Does he expect every Frenchman to be a Montesquieu or a Descartes? Does he expect every Englishman to be a Milton or a Peel? Is he not somewhat surprised that every American is not a Webster or a Clay? I thank God, sir, that he is allowed in this matter of education to even establish a proposition between the few that have genius and the masses of the people;

and it will be a great day for us here in America when we be allowed the same for it is the only thing in which we are behind them. Let him remember sir, that in this country genius is not so lightly appreciated as it is over in Europe, it is because there is not so much education among the many here and that the splendor of talent has trouble to send its rays or shining lights across the impenetrable cloud which is called ignorance. In his speech last evening the same gentleman did assert that there was no such a thing as "an absolute right," has he forgotten then one of the four natural laws? Has he not read somewhere that the "something natural which inspires one to seek food" is a natural law. I refer him to Mortesquieu and in as much as the gentleman is a lawyer he is bound to accept him for authority; but who did ever hear a gentleman discuss absolute rights and refer us to Mr. Buckle? Who in the name of God, ever heard a lawyer before cite such an authority? I have read much Mr. President in several languages and in several parts of the world, but I never heard about that gentleman, and if it is a natural law to seek food it becomes an absolute right for a child to have it and who is going to give it to him? Society has made it an absolute right that the body should be covered with some rags at any rate. I say this is an absolute right because your laws will confine into your jails any one who should claim it a natural right to show his nakedness upon the streets in full daylight and I believe the law stands good in moonshine. Answer the question that was made to you by the gentleman from Otoe (Mr. McCann) in straightforward manner and do not fall back with a very lame answer upon our declaration of independence, that most sacred and most absolute right of a republic like ours; who is going to feed and clothe the child if the parent does not do it? Why the nation that should not do it has no freemen for citizens, but she has slaves and we are freemen and God knows we love the nation because our nation is another mother to us, it is our providence in this life. I apprehend that the difficulty with the gentleman and with some others is to make no difference between natural laws, political laws and civil laws. The gentleman from Lancaster tells us further that our school houses are good for nothing, our system is worthless. Just so, and why? Because we do not take hold of the matter in the proper way; because we are somewhat careless, that is the reason, we want compulsion in this matter. They admit it is somewhat better in the great cities, and why is it so there? Because there is already a little more compulsion there, upon those who desire to keep their proper station in society. I have heard a gentleman on this floor say that we should have the system of compulsory education because Prussia has it. Do we believe in the Bible? Because an Englishman does? Although I am a member of the committee who reported this bill Mr. President, I am not the one that can claim the honor of having introduced this proposition but now that the proposition is before you I am somewhat proud to stand by it, and if I was not afraid to intrude too long upon the time of the convention, I would give you in detail the working of our Elymosynary schools in France. Sufficient for me sir, to tell this convention that such an establishment is not only self sustaining, but that when well administered it is a matter of revenue to the state. Sufficient for me to tell you sir, that some of our best men have stepped out of its portals, for it has given an opportunity to the nation to enlighten the minds and to cultivate the souls of many who without this beneficent help would have grown up in ignorance, perhaps vice. I am desirous to see the proposition remain as it has been amended in the committee of the whole. I hope it will remain in the body of this constitution so that the prejudices of ignorance will have no chance to destroy this good work by submitting it in a separate proposition. The lily Mr. President, is not always, yet has it not always the same charms?

Mr. MAXWELL. Mr. President. I will endeavor to occupy as short time as possible——

Mr. ESTABROOK. Mr. President. Is it to be understood that this closes the debate?

The PRESIDENT. That will be a question for the convention.

Mr. MAXWELL. Certain gentlemen it is said are disposed to influence the people against this measure. I am not willing to accept that our constituents are such as will accept a bad measure or oppose a good one because of any influence. Now, Mr. President, the proposition made by gentlemen on the other side and the only one is this, that the child is educated by the tax and as a consequence the right to force that child into the schools prepared by those taxes. My friend from Douglas (Mr. Estabrook) has referred under this head to the building of a bridge. I think the gentleman from Otoe (Mr. Campbell) answers that completely, that the state may build a bridge, but it cannot compel a man to travel over it. No one will claim that the state can compel that man to travel over this road or that. They can do as they please. Still those are supported by public tax just as much as any common schools are sustained. This tax is a matter of short duration. It will be but a few years until our school fund will be sufficient to sustain the schools. The moment the tax ceases then the right of the state will cease, but is the premise true? Is the proposition they make true? Now when parties come in here and seek to show that compulsory education is necessary, it is for them to make out clear cases, to show the necessity of this change. They cannot do it by pleading to our sympathies, talking about everything else except the matter in issue. They must show that ignorance is on the increase, that our schools are valueless under the present system. Have they done this? Not a single man on this floor on the other side has claimed that ignorance is on the increase, no one has claimed but that our schools are valuable. Why is this matter sought to be put in this constitution? They tell you the state has the right to preserve itself. Who has shown or contended for a moment that the state is in danger of suffering? Let us have a few facts bearing on this to show the danger to the state unless this measure is adopted. Why do they not show the facts to substantiate their theory. All through the west we have educational institutions, we have one here in this place, a collegiate institution in Nebraska City, and an institution at Omaha. Now while our land is filled with schools, well sustained, and teachers well paid, it is sought to engraft a provision in our constitution to take the child away from the parent; they tell us here that the state has the right to take charge of the child; if you once grant this doctrine to be right where are you going to stop? If you once establish that as a fundamental principle, then the father has no control over the son; nor the mother over the daughter, and if they can force them into a school cannot they force them into a reformatory institution or prison? The gentleman goes on and tells you that thousands of people on our public works are unable to read or write. Perhaps there may be a few, but are their children unable to read and write? I think you will find it very hard to find a family in any northern state where the members of it are not able to read and write, I have found it so. He goes on to tell you that the conquering of France by Germany was due to the superior intelligence of the German soldiers. Is this true? Has that doctrine been true in history? How did we find it in Rome? Was not Rome at the time the Goths and Vandals overrun it the most intelligent country in the known world? The same hosts from Germany overpowered Rome and destroyed civilization. How is it in Prussia? In the time of Frederick the Great, Prussia was the most warlike nation in Europe. She fought three nations at the same time, Russia, with army superior to that of Prussia, Austria with a large army and France with an army equal to nearly both the others.. Frederick extricated his army and defeated each one of those armies. We find that the great Napoleon swept through Prussia like a whirlwind and defeated Prussia, but it was only a momentary shock, they were defeated by his movements taking them unprepared. It is superior generalship that gains battles. Even in France in the late war, was it not superior generalship that gained the victory of the Prussians. Prussia had two soldiers for every one that France had. France had no real army such as she supposed she had. She supposed she had 500,000 men and had only 300,000. How was it with the Prussians? They sent their legions against the French and defeated them at every single point. There was no point I remember of where the Prussians and the French fought man to man. The same in our own war here; where northern men were pitted against southern in front of Richmond and until superior generals were sent there, who understood the ground on which he went, a man in whom the soldiers had confidence, they did not suffer a defeat. Our men were the most educated and still for three long years the north suffered defeat before Richmond. The right man came though at last and by managing the army in the way he did secured success. Generalship wins battles and nothing else, so that we can claim nothing for protection in a military point of view, because in that regard we cannot claim compulsory education being necessary for the defense of the state in a military point of view. We are told a very pathetic tale about these waifs running on the streets of Omaha. Those tales told this convention might be very appropriate in appealing to their benevolence to have them contribute something to provide an institution for their care, but it seems to me these few waifs wandering about the streets of Omaha, these few exceptions to the general rule should not be urged as a reason why the children of this state should be compelled to go to school. The argument falls short. The gentleman goes on and tells a very pathetic tale about a father whipping his son to death. The gentleman does not contend this was an ignorant father, or that the child was not educated, he might have been an intelligent man, supposing he was now how long is it since a minister in New York whipped his little son to death because he would not kneel down and pray. These go to show how hard the gentleman is pressed for argument. He goes on to tell about the rights of parent and child. What right has the child only that the parent is liable for his necessaries, liable to provide as his circumstances will admit, for the food and clothing and such education as he is able to give him. I do not desire a race of men to grow up here who are the wards of the state. There is something more than a mere education necessary, they have to control themselves, have to learn self reliance. I would give more for a man who has gained his energy by his own effort than for men who have no self reliance and know nothing about the elements that lead to success. If you want to make men of them, who can think for themselves, who can pursue their own avocations, you must teach them to rely upon themselves, and you never can do it by making them wards of the state, educating, feeding and clothing them at the expense of the state, you take away all manly independence, and that objection alone would be sufficient to defeat this. He says it would not do to send them to the penitentiary; his language shows that they ought not to be put in a school where children not accused of crime are placed. His own admission shows that there ought to be a reformatory school, where only those who have committed some offense are sent. Do you propose to place children ragged and dirty with the children that pilfer? It looks that way. It is going to make no distinction between poverty and crime; poverty in his view is crime. He proposes to place together in a reformatory school; his proposition means to reform the poor boy because he is ragged and dirty. We propose and are ready to place a proviso in the constitution, for erecting a reformatory institution for those children accused of crime, and propose to keep that class to themselves; we do not propose because a boy is poor to put him in with a villian. Does the gentleman propose to unite them together, so that the poor boys may learn the vices of the vicious one, because any one familiar with our public schools knows that vices are communicated from one scholar to another. The gentleman goes on and states that we have provided for this class of schools, to unite these three together. The development and instruction of those who have not proper care. And the gentleman in order to put the matter beyond all controversy goes on to tell of a respectable family of boys who were in the habit of stealing. He tells you there is no organized opposition to this measure. That is true. But does the gentleman mean by putting in that word "organized" to admit there is opposition? There has not been time to organize. It is only a proposition as yet. Now, Mr. President, in regard to these poor waifs. Does not onr present law provide for them; that the overseers should take care of those children. There is no necessity of filling our constitution with this.. The gentleman tells you I voted for eight judges and giving jurisdiction to probate judges. It is true. I did. I voted for an independent supreme court. I voted for five judicial districts for this reason—that it seemed to be the wish of the people to have five. As to county courts that measure is not what I would like to have, but I accept what the majority accepts. As to crime being on the increase, I think the gentleman's own statement shows, on the contrary that it is being diminished. And the vote that county courts have jurisdiction in certain cases is only for convenience, more particularly in the new counties. He tells you he is elected and sent here, and whether he represents his constituency or not they must take the chances. Now, sir, we have come here as representatives of the people, to frame a constitution for their approval. The gentleman wandered entirely from the subject all the way through. It is simply a matter of expediency as to whether we submit this in the constitution or separately. That is the question. It does not necessarily follow that we should go into the merits of the case. Why those who are opposed to submitting it as an independent proposition are opposed to the measure. And there are many of the people opposed to it. I do not think they will submit to compulsory education, and have the school fund appropriated to the building of reformatory institutions. Let us look at the fourth section. It provides that they may establish schools for the safe keeping, education and employment of all children under the ages of sixteen years, who are destitute of proper parental care, or who are growing up in mendicancy, ignorance or vice." This proposes to place in the same school all who are situated as stated in the section. It proposes to support those institutions entirely out of the school fund. We received this school fund in trust from the United States, for the purpose of educating the children of the state. But here it is proposed to differ from that. That reads, in fact that they may establish houses of reformation for the "safe keeping." You must put them in prison if they are to be safely kept. That is what it means. What tribunal is to ascertain where this is the case? Who must distinguish? So that each one of these are condemned upon their face, and sent to this prison, and the prison to be sustained out of the common school fund of the state. We have but one city, as far as it appears, that needs such an institution. The gentleman from Douglas contends that there are such waifs in Omaha. No one else has contended any such thing. So there is one institution that must be built at once. If we erect a prison we must provide by general appropriation for such a place. Michigan has established a house of reformation, where those children who are convicted of petty offenses are sent.

Mr. President is it best for us, coming here together as friends from every part of the state, to submit a proposition of this kind in the body of the constitution? If the people are so eager to adopt it why not submit it independently? We need a new judiciary, and they want to carry a measure like this along with the constitution, and they know the people are opposed to it. This idea originated in the middle ages, and the old spirit is sought to be revived. England has put aside all those institutions, and Scotland has put to flight the old established form of church and people created and sustained churches of their own. The same system was attempted in Massachusetts. Men were compelled to pay whether they went to church or not. And it is sought to re-enact the same principle here in regard to our schools. And I say that the men who advocate this must show some good reason for such advocacy, when our people are becoming better educated and more enlightened every day. The gentleman says it will be necessary, if this is put into the constitution, to convince the people that is necessary. Why, that proves the thing is wrong and that there is doubt about it. Is it right to argue the matter before the people to convince them the thing is right? I say no. The people will not have this thing forced upon them. They are willing to listen to argument, but they will not be forced and the chances are if this thing is submitted in the constitution it will be rejected. Being desirous that this constitution be adopted, I hope this proposition will be struck out of this article and submitted as a separate article.

Mr. MOORE. Mr. President. I call for a division of the question.

Mr. WILSON. The gentleman is out of order.

Mr. BALLARD. Mr. President. I would like to say a word before I vote, if I be allowed permission. ("Leave, leave.")

Mr. BALLARD. I will vote to strike out the proposition from the constitution. I do this, sir, because I am a strong advocate of reformatory schools. I wish a school of this character established at once, and to have every member of this body put in it immediately, in order to learn three things, 1st, when to make a speech; 2nd, what to say; 3rd, when to quit.

Mr. WAKELEY. Mr. President. I would ask that I be allowed ten minutes to give to this question.

("Leave, leave.")

Mr. WAKELEY. I know just how long a time I will need, thanks to an hours's work last night. I have put my ideas on paper. The reporters need not report what I am about to read, as I will furnish them a copy.

Mr. WILSON. Mr. President. I call the gentleman to order; the previous question has been called for.

Mr. WAKELEY . If the gentleman don't want to hear me, Mr. President, he can go into the anteroom.

Mr. WILSON. Mr. President. I have listened to too many remarks now. I was as well prepared to vote last Saturday as I am now.

Mr. WAKELEY. The gentleman from Johnson (Mr. Wilson) has the advantage over the other members of the convention in "perspicasity" and "perspicuity." (Laughter.)

Mr. President. It is a right of every human being—an inherent and indestructible right—that all the powers and the faculties, bodily and mental, with which his Creator endowed him shall be duly developed. In proportion as the mind is nobler than the body—as that which is immortal transcends what is mortal and perishable—by so far is the duty of the state higher and more imperative to provide for the care of the mind, than for the needs of the body.

Upon what principle is it maintained that the government may and should compel provisions to be made for physical necessities, and comforts, but has no right to forbid that the human mind—that emanation from Infinite intelligence—the attribute which links man to his God, may be starved, and dwarfed, and brutalized? Shall the intellect of man, capable of all high development; of splendid achievement in letters, in are, in science, in eloquence, in statesmanship—shall this be left from poverty, from neglect, from the caprice, or the barbarism of parents, guardians, of the public—to grovel through life unformed and unfruitful? This I think, is the real question. And I say no! God forbid!

It is said that we propose to invade the domestic sanctity, and interfere with private right.

Is it the right of the parent to shut out the light of letters, and the radiance of education from the reason of his child? Whence comes the right? Intellect and soul are God's noblest benefactions to man. You shall not darken the one, nor benight the other.

Sir, I do not ask the state to interfere with the use which any adult, responsible citizen may choose to make of the mind and the reason with which he is blessed. It is for helpless childhood that I plead and invoke the power of the state. Yet, I invoke this only when, from unwillingness, or neglect, those who have the care of it fail to do their plain duty; or, from inability, fail to recognize his birthright, and give it a fair field to work out its destiny. I ask only this—that, when the state provides all the means of education—free as the air is free to be breathed—and the child has the mental and physical vigor and ability to be educated and put upon the high road to advancement, and to all the delights that come from cultivated reason, and intellect; to usefulness and to honor—that no criminal neglect, no cupidity, no indifference, no caprice, no perversity of any human being shall be able to rob him of the fruition of the mind and of the genius which God has given him.

Who on this floor will tell me that, rather than suffer such a deprivation, he would not, in his childhood have gone hungry, and in rags, and, in any and all physical discomforts?

Mr. President. My career has been a very humble one, but, whatever I am; all that I can hope to be; and a great part of the highest joys and the most supreme delights of my life I owe to the one thing, which I ever recall with fervent gratefulness—that, in my obscure childhood, an honored father and a revered mother amidst toils and poverty, and privation, made it the great aim of their lives that their children should have a thorough common school education. I hope I shall be pardoned for here rendering this filial tribute to the memory of the one, and the name of the other; that my children may read it, if what we say here shall be read at all.

But, had this been otherwise, had my childhood been in the keeping of those who had denied or withheld my born right—to have my understanding enlightened; my mind instructed; and my reason enlarged—I would have lived in deep thankfulness and gratitude to my native state if she had secured to me, by compulsion, that inestimable privilege and right.

And, sir, in public as in private affairs, we shall not go far wrong if we follow the divine precept—"As ye would that men should do to you, do ye also to them likewise."

These, Mr. President, are my sentiments. I feel no doubt that the principle of compulsory education will come to be generally approved. But in deference to doubts whether public opinion is yet ready to acknowledge its justice, and beneficence, I deem it proper that the vote upon it should be taken separately. I, therefore, support the motion.

Mr. HASCALL. Mr. President. I would like to have leave to say a few words.

("Leave, leave.")

It is too late, Mr. President, to make any extended remarks upon this subject. I thought I understood the matter somewhat thoroughly at the time it was discussed before, but during this discussion, the full meaning of the section has been made plain.

One of the objections to the section under consideration is that it blends together the prison, the poor house, the foundling hospital, the common free school and the compulsory school, and brings together for the purposes of education the juvenile criminal, the young vagabond and the orphan child, guiltless of crime and without criminal inclinations, and the children of poor parents against whom nothing can be alleged but their poverty. That seems to be the tenor of the section. Now if we are to provide for a free school system, let us do so without this reformatory school matter in addition. Compulsory education should be submitted to the people of the state as a proposition by itself and not mingled in with provisions for free schools and reformatory schools for juvenile offenders. If this is done then the question will stand upon its merits. We are all, undoubtedly in favor of reformatory schools for criminals, but I am opposed to putting children without parents in the same category with criminals. I shall vote to strike out this section; not that I wish to commit myself against compulsory education, but for the purpose of inserting the proposition in some part of the constitution to be submitted to the people and also insert a section in some other part which provides for reformatory institutions.

Mr. TOWLE. Mr. President. I call for the previous question.

Mr. MOORE. Mr. President. I call for a division of the question. I would like to see the first part retained.

Mr. ROBINSON. Mr. President. I would like to ask whether if this motion prevails, the question will be upon the amendment?

The PRESIDENT. Yes sir.

Mr. MOORE. Mr. President. I wish to have a division of the question. I wish to have this part of the section retained. "The legislature shall require by law that every child of sufficient mental and physical ability between the ages of six and sixteen years, unless educated by other means, shall attend a public school supported by the common school fund, for some definite length of time each year, to be fixed by law." This is the first proposition, and the second will follow.

The PRESIDENT. The question is shall the main question be now put.

The motion was agreed to.

The PRESIDENT. The question is on the motion of the gentleman from Cass (Mr. Maxwell) to strike out and submit section four as a separate proposition.

Mr. WEAVER. Mr. President. I would like to hear that section read as amended.

The secretary read the section, as follows:

Sec. 4. The legislature shall require by law that every child of sufficient mental and physical ability, between the ages of eight and sixteen years, unless educated by other means, shall in all cases where practicable attend a public school supported by the common school fund, for some definite length of time each year, to be fixed by law, and shall establish a school or schools for the safe keeping, education, employment, and reformation of all children under sixteen years of age without proper paternal care, who are growing up in mendicancy, ignorance, idleness or vice, which school shall constitute a part of the system of common schools.

The PRESIDENT. The ayes and nays are demanded—Secretary, call the roll.

The vote was taken and the result was announced—ayes, 25; nays, 15—as follows:

AYES.

Abbott,
Ballard,
Campbell,
Cassell,
Gray,
Hascall,
Hinman,
Kenaston,
Kilburn,
Kirkpatrick,
Lyon,
Maxwell,
Moore,
Philpott,
Price,
Reynolds,
Robinson,
Scofield,
Sprague,
Stevenson,
Thummel,
Thomas,
Towle,
Wakeley,
Wilson.—25.

NAYS.

Curtis,
Estabrook,
Gibbs,
Griggs,
Granger,
Ley,
McCann,
Majors,
Neligh,
Parchin,
Shaff,
Speice,
Tisdel,
Vifquain,
Weaver.—15.

ABSENT OR NOT VOTING.

Boyd,
Eaton,
Grenell,
Lake,
Mason,
Manderson,
Myers,
Newsom,
Parker,
Stewart,
Woolworth,
Mr. President.—12.

The motion was agreed to.

Mr. McCANN. Mr. President. I move that section four be recommitted to the committee on education with instructions to amend and report the same back to the convention as a proposition to be submitted separately.

The motion was agreed to.

The secretary read the next section, as follows:

Sec. 5. The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable, and such schools shall be free and without charge for tuition, to all children between the ages of five and twenty-one years.

Section five was adopted.

The secretary read the next section, as follows:

Sec. 6. Provision shall be made by law for the equal distribution of the income of the fund set apart for the support of common schools, among the several school districts of the state in proportion to the number of children and youth resident therein between the ages of five and twenty-one years, and no appropriation shall be made from said fund to any district for the year in which a school shall not be maintained at least three months.

Section six was adopted.

The secretary read the next section, as follows:

Sec. 7. No University lands, Agricultural College lands, common school lands, or other lands which are now held or which may be hereafter acquired by the state for educational purposes, shall be sold for less than seven dollars per acre.

Mr. ROBINSON. Mr. President. I move to amend by striking out the word "seven" and inserting "three."

I will state my reason for this Mr. President. I believe the legislature raised the price of these lands to seven dollars an acre, and I think they ought to be sold for that price if we can get it, but I would like to allow the legislature after they have sold all they can at that price to have the privilege of putting it down to even three dollars. I know that there are some of the lands in this county that will not sell for twenty-five cents an acre, in sections sixteen and thirty-six.

Mr. HASCALL. I move the previous question.

The motion was agreed to.

The PRESIDENT. The question is on striking out the word "seven" and inserting the word "three."

The ayes and nays were demanded.

The secretary called the roll and the president announced the result: Yeas, 28; Nays, 12, as follows:

YEAS.

Abbott,
Ballard,
Campbell,
Curtis,
Estabrook,
Gibbs,
Gray,
Griggs,
Hascall,
Hinman,
McCann,
Majors,
Maxwell,
Moore,
Neligh,
Parchin,
Price,
Shaff,
Sprague,
Speice,
Thummel,
Thomas,
Tisdel,
Towle,
Vifquain,
Wakeley,
Weaver,
Wilson.—28.

NAYS.

Cassell,
Granger,
Kenaston,
Kilburn,
Kirkpatrick.
Ley,
Lyon,
Philpott,
Reynolds,
Robinson,
Scofield,
Stevenson.—12.

ABSENT AND NOT VOTNG.

Boyd,
Eaton,
Grenell,
Lake,
Manderson,
Mason,
Myers,
Newsom,
Parker,
Stewart,
Weaver,
Woolworth,
Mr. President.—13

The PRESIDENT. The question is on the passage of the section.

The ayes and nays were demanded.

The secretary called the roll and the president announced the result, ayes, 6; nays, 33, as follows:

YEAS.

Kilburn,
Lvon,
Philpott,
Robinson,
Scofield,
Stevenson.—6.

NAYS.

Abbott,
Ballard,
Campbell,
Cassell,
Curtis,
Estabrook,
Gibbs,
Granger,
Gray,
Griggs,
Hascall,
Hinman,
Kenaston,
Kirkpatrick,
Ley,
McCann,
Majors,
Maxwell,
Moore,
Neligh,
Parchin,
Price,
Reynolds,
Shaff,
Sprague,
Speice,
Thummel,
Thomas,
Tisdel,
Towle,
Vifquain,
Wakeley,
Wilson.—33.

ABSENT AND NOT VOTING.

Boyd,
Eaton
Grenell,
Lake,
Manderson,
Mason,
Myers,
Newsom,
Parker,
Stewart.
Woolworth,
Mr. President.—12

Mr. CASSELL. (When his name was called.) Mr. President. I am in favor of leaving this matter to the legislature. I therefore vote nay.

Mr. KENASTON. (When his name was called.) Mr. President. I vote nay for the same reason,

Mr. KIRKPATRICK. (When his name was called.) Mr. President. I vote nay for the same reason.

Mr. GRANGER. Mr. President. I was out of the hall when the vote was taken and wish to vote.

The PRESIDENT. Has the gentleman leave to vote.

(Leave, leave.)

The secretary will call the name of the gentleman.

The next section was read by the secretary, as follows:

Sec. 8. All funds belonging to the state for educational purposes, the interest and income whereof only are to be used, shall be deemed trust funds held by the state as trustee, and the state shall supply all losses thereof that may in any manner occur, so that the same shall remain forever inviolate and undiminished; and such funds, with the interest and income thereof, are hereby solemnly pledged for the purposes for which they are granted and set apart, and shall not be transfered to any other fund for other uses.

Section eight was adopted.

Mr. PHILPOTT. Mr. President. I have a section to offer in place of section nine which has been stricken out.

The secretary read the section, as follows:

The general government of the University of Nebraska and the management of the funds shall be vested in a Board of Education composed of two members for each judicial district to be styled the Board of Education of the University of Nebraska; two members of which shall be elected in each judicial district by the electors thereof. Their duties, powers and terms of office shall be prescribed by law. They shall receive no compensation except actual necessary expenses.

Mr. PHILPOTT. Mr. President. I am of the opinion that the general government of the University of Nebraska ought to be placed with persons who will be charged specially with that business. I know that section eleven provides for its government and management, but I am not satisfied with it. I desire to call attention to section eleven.

"The superintendent of public instruction, secretary of state, treasurer, attorney general, shall constitute a board of commissioners for the sale, leasing and general management of all lands and funds set apart for educational purposes, and for the investment of school funds in such manner as may be provided by law." Gentlemen may claim that that section provides for the government of the University and that we need not look especially after the interests of the University of the state. It may be claimed that all the authority necessary for that purpose is vested in the state superintendent and such other officers as the legislature may direct. Who will those officers be? Who are the officers this constitution has provided for? They are either the officers of the judiciary or executive departments. It is more than probable that the officers intended by this section are to be those of the executive department. I claim if we leave it under the direction of section eleven, the the control and management will be left in the hands of the state superintendent, and some of the executive officers. It will not be safe to entrust such a power, for the consideration that those officers will be charged with numerous other duties, and they will not have time, or feel the interest in the management of the University that officers who are especially charged with it would have whose bounden duty it was to attend to these matters. It may be claimed that the legislature will appoint other officers than those. This says "the superintendent and such other officers that the legislature may direct." They must create some new officers, and who are those persons to be? They must be the executive officers or other officers to be created, and the object of my amendment is to know in whose hands we entrust this case. Every citizen has a right to know to whom so great a trust is given. In the section I have offered I provide that it shall be placed in the hands of persons chosen from each judicial district. How are they to be chosen? Directly by the electors of each of those districts. Now, it will not be adding a great expense. It provides that they shall receive no compensation except that of actual necessary expenses. I desire to call your attention to the manner in which universities well governed are governed. Look at the state of Michigan. A more prosperous university cannot be found. It is left in the hands of twelve persons, called regents. I have not used the word "regents," because it is objectionable to some. Take Harvard college. It is placed in the hands of persons having it especially in their charge. There the whole management is in the hands of the governor, the counsel and the senate of the state, besides the president and all of the ministers of the Congregational church in some six towns in the immediate neighborhood of the college, and it is handled with great success. I refer to these in order that I may meet the objections that might be advanced that this board may be increased. I hold that the state University should be placed in the hands of persons specially charged. Look at the state of Ohio, with its university, which has no doubt, as many sections of land as our own university. But it was not placed in the hands of persons specially charged; and today it is not known where it is located scarcely; indeed very few know. It is located in the little town of Athens, and it is only known by persons passing through when they are informed that it is the state university. And I think that is owing to the bad policy of not having proper persons to manage its interests.

Mr. HASCALL. I want to propose an amendment, which, I think, the gentleman will accept. So as to except the Agricultural college, State Normal school and Deaf and Dumb Institute.

Mr. ESTABROOK. I would like to make a statement. The last that was announced was that section eight carried, section nine was stricken out in the committee of the whole. But it is not announced that we have acted on it. The question is whether we will adopt that action.

Mr. HASCALL. We are acting upon the report of the committee of the whole now.

Mr. ESTABROOK. Yes, and the question is whether we will adopt that action.

The PRESIDENT. The gentleman from Lancaster (Mr. Philpott) offers a new section for that. The question is upon the consideration of section nine, whereupon the gentleman from Lancaster offers a substitute.

Mr. ESTABROOK. I ask that section nine be read, that we may see which is best.

The secretary read the ninth section.

Mr. ESTABROOK. Now, the question is whether we will confirm the amendment of the committee.

Mr. PHILPOTT. Mr. President. I have offered that as a substitute for section nine. The great objection to the section in the committee of the whole was that if we adopted it thereby confirming the location of the University and the Agricultural college at the capital; that, perhaps, we might also sanction that law by which the state university was created; and it was the great objection of many to that law, and they did not desire to do anything which showed them in favor of the law. It was said it was not necessary to confirm the location of those buildings in order that we could be entitled to receive the appropriation of land for agricultural purposes. And under those reasons it was stricken out. Now as to the amendment of Mr. Hascall, I am not inclined to accept it, for this reason. The University of Nebraska includes six departments,—a college of ancient and modern literature, mathematics and the natural sciences.—2. A college of of Agriculture. 3. A college of law. 4. A college of Medicine. 5 A college of practical science, civil engineering and mechanics. 6. A college of fine arts; provided, that the college of fine arts shall be established only when the annual income of the university fund shall have reached $100,000. And to control these institutions I desire to be in the hands of persons capable of looking after them. I would not insert the government of the High School at Omaha.

Mr. HASCALL. It is not the High school, but the Deaf and Dumb Institute.

Mr. PHILPOTT. Well, I say, I would not include the Normal school nor the High school. I am not disposed to accept the amendment. Another reason why I desire this under the entire control of a board is, if it is left in the hands of gentlemen of the state, and such others as the legislature may appoint, they will come here, hold office for a time, and might be manipulated, perhaps, by the chancellor. I don't mean our present one, but the chancellor who may come hereafter. They would be here for a short time, and might easily be manipulated by those gentlemen to the disadvantage of the university. I want it to be placed in the hands of men who will have at heart the educational interests and the interests of the university, and will help to build up the objects for which that institution was intended.

Mr. MAXWELL. Mr. President. The men elected to this position will receive nothing but their expenses. It does seem to me that it will not do to give the supreme control of the educational interests of the state to the state officers. They are men generally, who care but little about these institutions. The university of the state should be separate and beyond all political influences, and it will be used for this purpose, if it is left in the hands of the state officers. It is the experience of other states that the system proposed here is well adapted to secure the success of institutions like our university.

Mr. MAJORS. Mr. President. I wish to make but a few brief remarks upon this question, inasmuch as I have been mixed up with this school matter, by being connected with the committee. The proposition don't meet my approval, yet I have some objections to the amendment offered by the gentleman from Lancaster (Mr. Philpott.) I also object, for the same reasons, to the amendment of the gentleman from Douglas (Mr. Hascall) as I am one of those that believe that too much legislation in detail, on the part of this convention, is wrong in principle and therefore we provided that the educational interests of the state should be vested in the state superintendent of instruction and such other state officers as the legislature may provide. The state university is of sufficient importance to engross the attention of the officers whom the legislature may appoint for its guidance. I would provide for the election of three men at large, and these together with the superintendent, by virtue of his office, and the state treasurer, by virtue of his office should constitute the board of education and the management of the state university should be under their control. I would do this from the fact that I expect these men to be elected from their peculiar fitness for the position. I would also allow three to be selected in the same way by the legislature to govern the state normal schools in connection with the state officers.

Mr. PHILPOTT. Mr. President. I wish to say I accept the amendment of the gentleman from Douglas (Mr. Hascall).

Mr. MAJORS. Very well sir. I don't think, Mr. President, that I will be able to say anything that will interest a man on this floor, if this noise is kept up.

The PRESIDENT. The members will keep better order.

Mr. MAJORS. I wish to say, Mr. President, that we have no interest, in my opinion, in the state that will compare in importance with our educational interests and for us to say now, who shall have control of all the educational interests of the state;

I think is wrong in rpinciple,. for this reason, I take it the control and management of the state university is a peculiar task, and requires different talent from that required to manage any other branch of our educational interests. While in the state normal school the object to be attained is to get up the best possible method of teaching, the state university deals in the higher points in the education of students. I think there should be a class of teachers fitted for the peculiar work in each. The board that is selected for the management of the university located here should be selected for their peculiar fitness for the office. The state normal school is located, at the present time at Peru. I know there are frequently questions arising in the management of the school, and while the faculty are responsible for the manner in which the school is conducted yet they may make blunders, and it has been found before now that the board were required to reverse the decisions of the faculty. Therefore it is best to have the board situated so close to the school that it would not cost the state a large sum to convene the board whenever their services are required. Why not leave the power to govern these institutions with the legislature rather than fix it definitely in the constitution, or declare that one certain man shall have charge of the educational interests of the state. Now, what are the questions connected with the workings of the state normal school? The law as it now exists allows the board who have charge of the school, four regular meetings in the year, all other meetings which are held by the board, they make no charge for. This is the plan upon which I wish to see the action of this board based. Therefore I am opposed to the proposition of the gentleman from Lancaster (Mr. Philpott) and hope it will not prevail.

Mr. HASCALL. Mr. President. In offering this amendment to put the management of these different schools under the control of the state officers I did not mean to reflect upon the action of the board who have charge cf the Peru school.

Mr. MAJORS. Will the gentleman allow me to make one suggestion.

Mr. HASCALL. Certainly.

Mr. MAJORS. We provided in the board, that two shall be elected from each representative district and when they are provided for the citizens of the state should come in and then if we have a surplus the privilege will be extended to citizens of other states. It is just as broad as the state——

Mr. HASCALL. It is just as broad as thirteen——

Mr. MAJORS. Twenty-six now.

Mr. HASCALL. Yes sir, twenty-six, twice the number of senatorial districts. That is all well enough and to extend it to the state but I don't believe in educating the teachers of other states. I am not arraigning the members of this board but we want to have one person on this board from each of the five grand divisions of the state. Now it is proposed to make a large number of representative districts in the state and I would like to see at least two scholars in this school from each representative district. I take it upon me now to say that there is not two scholars in that school for each senatorial district. We don't want a board located at Peru. We have no objection to the institution being there but we want a state board. The argument of the gentleman from Lancaster (Mr. Philpott) is a good one, that this institution should be managed in the interests of the people of the state and not of Peru. The superintendent of public instruction will have enough to do if he manages the common schools of this state without putting upon him any other duties. I find there are a great many arguments for a board of regents and a great many friends in favor of that proposition, the arguments in favor of that will apply to the proposition of the gentleman from Lancaster. There is no sense in having a board of regents for the university, another for the Deaf and Dumb institute and another for the state normal school, but by centering them in this one board we will find that our state educational institutions can, this way be well managed and will prosper. I hope therefore, that this proposition as amended will be adopted without much opposition.

Mr. McCANN. Mr. President. The successful management of the university of Nebraska depends altogether upon the proper qualifications of the members of the board of regents—the board of education, or trustees, or whatever the title of this board of direction may be.

To commit the care and direction of the educational interests of this state to a board composed of the state officers, a number of gentlemen always selected from the political parties of the times, persons who may not be, and generally are not fitted by education and experience to advise, direct and control the affairs of institutions of learning and who are liable to change every two years—men who must necessarily bring with them diverse and conflicting views and preferences, would be to at once and forever surrender all the benefits and advantages which we expect, and which ought to flow from our state university and the munificent fund provided for its support. Those who have the management and care of the university and agricultural college should be above the suspicion of being influenced by party or political considerations. I trust, Mr. President, that the care of these institutions may ever be committed to men chosen from the respective judicial districts of the state with reference to their peculiar fitness for the discharge of the very important duties to which they shall be called. Let us Mr. President, lift these institutions far above all party and all political strife, and make them what they were intended to be and what it is our high duty and privilege to make them.

Mr. MOORE. Mr. President. I wish to offer an amendment by making the number from each judicial district two, instead of one.

Mr. PHILPOTT. I will accept the amendment.

Mr. ESTABROOK. Mr. President. Section eleven of the original report was amended in the committee of the whole so as to make two sections of it, sections eleven and twelve. Section eleven was adopted, which provides that the supervision of public instruction is to be vested in the superintendent and some other officers as the legislature may provide. Whether it be in the management of the university or normal school in the way of regents, we leave that to the legislature. That is the extent of section eleven. Then we come to section twelve, and while all the other portions of the article were agreed to, fixed and perfected, section twelve was held in abeyance and referred to a special committee consisting of the chairmen of certain committees interested in the state lands, state funds, buildings, school lands and the like, together with several other gentlemen. This committee was instructed to report one more section. In obedience to these instructions that committee reported through Mr. Schofield, the chairman, as follows; "The commissioner of public lands and buildings, secretary of state, treasurer, and attorney general shall form a board which shall have general supervision and control of all the buildings, grounds and lands of the state, the states prison, asylum and all other institutions except those for educational purposes, and shall perform such duties, subject to such rules and regulations as may be prescribed by law." Before we went on to consider the portions of this article in the house, I offered to bring the school interests, school lands within the purview of this provision which was adopted as section twenty in the article on executive. I offered this as section twelve, which together with section eleven, covers all the ground, and unless there is objection to this method, it seems to me it supersedes the necessity of the provision of the gentleman from Lancaster (Mr. Philpott). The amendment was in possession of the house and was held in abeyance. It is as follows:

"The supervision of public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct. The superintendent shall be chosen by the qualified electors of the state in such manner as the legislature shall direct, his powers and duties shall be prescribed by law."

It seems to me that these two provisions cover the entire ground. One contemplates education, and the other relates directly to the property. The great objection to the report of this committee was the multiplication of new officers. That was the reason why the proposition for a state land commissioner as such was rejected, and the matter was re-referred with instructions that they should so provide that there should be but one officer. In obedience to that the committee have reported this, that the three state officers, one whose appropriate duty it will be to hold the funds, one whose appropriate duty it will be to give advice, furnish form and soforth, and the other to have custody of the records. These together with one individual elected outside shall constitute a board. It seems to me it was appropriate and proper that this board should have the management of state lands other than school lands, and also school lands. I know it is to become the most important bureau in the government of Nebraska, one that will have the most onerous duties to perform. If there is a separate department that needs to be well sustained it is the bureau of public lands. There is no earthly reason of providing that there shall be one board who shall have the interests of the other state lands in charge, and another state board who shall have the interests of the school in charge. It is now proposed that there shall be a board elected out of the several judicial districts. I do not know what duty they are to perform, whether they are to guard the lands or the educational interests or intended that they should take the place of the regents. It seems to me that this proposes to supersede the duties of both, and take the place of both sections eleven and twelve. It provides that the general government of the university of Nebraska, the management of its funds shall be vested in a board of education, composed of one member from each of the judicial districts. It is said this board will be elected of those who will not charge anything. Do you tell me that the funds of the state are to go into the hands of individuals elected under the constitutional provision who shall only be amenable to the laws of the state and supervising officers of the state as amateurs, so important a liberty as to control the school funds and lands shall be entrusted to a board who come here simply to play school officers, act as amateurs for the fun of it? Perhaps I cannot exactly appreciate the solemnity of it, but it strikes me that while it is possible to procure here, as I know they do in New York, a board of regents who shall act from mere amusement, shall have a general supervision of the educational department, who shall take off their gold spectacles and look wise while they give advice as to whether this or that system of education shall be adopted, or this or that school book should be adopted. It would be a very dangerous thing to say that a board of officers shall act independently, for fun and amusement, and take charge of the school fund money of the state of Nebraska, millions in value and my colleague (Mr. Hascall) is satisfied with it.

Mr. HASCALL. I do not understand it proposes to touch any school fund at all.

Mr. ESTABROOK. It is all the same whether it be funds of one class or another. It is funds very considerable in amount. I am committed to anything in this regard It strikes me it is unnecessary to have a board for the management of these funds.

Mr. ROBINSON. I ask for information, in whose hands do you propose to put the general management of the affairs in the university?

Mr. ESTABROOK. I propose to put them into the hands as I would in the board in the 20th section, and I propose to put the other educational interests in the hands of such officers as we provided for by section eleven.

Mr. McCANN. And how many officers do you provide?

Mr. ESTABROOK. Four.

Mr McCANN. Do I understand my friend to be serious in this? That four gentlemen are better fitted to take the charge of these institutions than five or ten gentlemen selected with reference to their different districts to serve longer terms?

Mr. ESTABROOK. That does not enter into the account. That ground has all been passed over before, and was the settled conclusion of this body that the interests should be vested in the board; and in obedience to that behest the committee went out and have reported section twenty as it stands in the article. It is not the question here whether the one plan or the other will be better, but whether we will now subject these to the same interests that the state lands are subjected.

Mr. CASSELL. Was not the instruction to that committee to report simply in favor of creating one officer to perform the duties of that office rather than two?

Mr. ESTABROOK. It is sufficient to know that they made their report, and that this is the report as I have read.

Mr. McCANN. I wish to correct the gentleman in this one particular. It is not proposed to take charge of the school lands or school funds of the state; nothing more than the appropriate fund which by law is set apart for the use of the university and agricultural college of the state of Nebraska, which comes into the hands of the state treasurer, and that officer gives his bond. These gentlemen have no control further than in directing what part shall be vested, and in what manner these funds shall be appropriated. It is begging the question. The simple question is this—is it better—

Mr. ESTABROOK. Well, wait a little before you go on with your speech. I don't want yours injected into mine. My speech is not big enough to hold it.

Mr. McCANN. We want to see where the difference exists.

Mr. ESTABROOK. I know that when I drew up section twelve, that it travelled the same ground, that it should embrace the care and interest of the school lands as well as the others. Now, you have to travel back and reverse that action if you urge the section of the amendment contemplated before the house. I will read it carefully. "The commissioner of public lands and buildings, the secretary of state, treasurer and attorney general shall form a board which shall have general supervision and control of all the buildings, grounds and lands of the state." I know I made the enquiry myself "Is that sufficiently broad to cover the school lands?" Because the reason I was placed there was because I was chairman of the committee on education, school funds and lands, and hence it was the intention that the board should have charge of the school interests, of all the buildings, grounds and lands of the state, the states prison, asylum, and the other institutions. I know we had the dictionary there to see what "institutions" meant; and we found it did not mean the building, or the school proper, called the university, so that it went on to say "except those for educational purposes." Giving them the control of the land, grounds, and funds. Now, this contemplates that the lands, a portion of them, shall be taken out of the fund, by the board. You must reverse the action.

Mr. McCANN. I would debate the question at issue from all the paper that is thrown around it. I believe it to be essentially this—shall the interest and management of the state university and agricultural college of the state of Nebraska—you may add, if you please, the normal school and deaf and dumb asylum—be committed to the care of four gentlemen elected for two years, to be made a foot ball of under these parties for two years or during the life of this constitution, and shall these interests or the control of these institutions be committed to the care of five gentlemen selected from the different parts of the state, with reference to their peculiar fitness for the discharge of these duties. If this convention, composed of men, to every one of whom these interests are sacred, say they are perfectly willing, and they deem it best to commit this to these four state officers, I submit; but I enter my protest, and I wish to be distinctly understood that what little experience I have had, and the deep convictions which press my mind, I will be pained, and I believe it will be a source of regret and pain to every well-wisher of these institutions in the state of Nebraska.

Mr. SPRAGUE. I wish to say to the members of this convention that I am decidedly in favor of the proposition which has been introduced by the gentleman from Lancaster. It will be remembered that while we had this article under consideration in the committee of the whole, I introduced a provision which was very similar in its temper to this one. The only difference is that it includes the deaf and dumb institution. I took occasion to state that I believed the institutions of the state were so that it required men to be selected with regard to their peculiar fitness. On my return home the last time, after introducing that resolution, I was met by my constituency, and they urged me to press my proposition before the convention. They said it was what they wanted. I believe, so far as I have had a chance to find out, that is the impression all over the state. They say universally "separate the educational interests from all other interests of the state, because it is paramount to them all." Hence, I wish to say that this matter confided to the hands of its friends, those selected with regard to their peculiar fitness for this kind of work, and I urge the members to day not to tack this thing on to the other state officers who are selected for another purpose and with different qualifications.

Mr. CAMPBELL. Mr. President. I do not think this conflicts with the article of the gentleman from Douglas, and the management of its funds. In that article he speaks of he puts the disposal of all the lands, the funds, into the state treasury, and this board has the management of the funds which belong to the state university. Now, in Nebraska City they have a board of education. It gets the state money. The money is in the state treasury. It is sent to the county treasurer; he puts it into the city treasury, and our board has the management of that money. But we never sell or touch it. We check it out to teachers and other things which we think necessary. The money is there in the state treasury. They come here, have their meeting, if the professors want their pay, we give them an order on the treasurer. And this board the gentleman speaks of has the sale of the lands, the loaning of the money and the management of it in that respect, but a certain part of it put aside for the university and the common school. It does not conflict with that article. I think it is an excellent article, and should go into the constitution. We pay large salaries to other men, and when it comes to school officers we pay them nothing. If it is important to pay judges and men for prosecuting criminals, certainly we should pay men who attend to the educational interests of the state. That is one objection I have to it and I hope it will pass. I think that this deaf and dumb institution should be attended to by men living in Omaha city, and I think that this normal school should be attended to by men living where it is situated. I shall vote for this amendment.

Mr. ROBINSON. Mr. President. I move to reconsider the vote by which the judicial article was postponed.

The PRESIDENT. The question is upon the re-consideration of the vote by which the judicial article was postponed.

Mr. BALLARD. Mr. President. I merely rise for the purpose of saying I hope this discussion will not come to a premature end. I desire to see everything this convention has done, worked over again or we will get through too soon. Now, sir, I am here to enter my solemn protest against this manner of proceeding. All this ground which has been discussed here today was thoroughly discussed the other day in committee of the whole. In the name of the people of the state of Nebraska, let us get through with this.

The PRESIDENT. The question is upon the postponement.

The ayes and nays being demanded, the secretary proceeded to call the roll.

The President announced the result—ayes, 18; nays, 19—as follows:

YEAS.

Gray,
Hascall,
Hinman,
Kenaston,
Kilburn,
Ley,
McCann,
Maxwell,
Moore,
Parchin,
Philpott,
Price,
Robinson,
Scofield,
Sprague,
Speice,
Towle,
Weaver.—18

NAYS.

Abbott,
Ballard,

Campbell,
Cassell,
Curtis,
Estabrook,
Granger,
Kirkpatrick,
Lyon,
Majors,
Neligh,
Reynolds,
Shaff,
Stevenson,
Thummel,
Thomas,
Vifquain,
Wakeley,
Wilson.—19.

ABSENT OR NOT VOTING.

Boyd,
Eaton,
Gibbs,
Grenell,
Griggs,
Lake,
Manderson,
Mason,
Myers,
Newsom,
Parker,
Stewart,
Tisdel,
Woolworth,
Mr. President.—15

So the motion to reconsider the vote by which the judiciary article was postponed, was not agreed to.

Adjournment.

Mr. PHILPOTT. I move we adjourn until 2 o'clock.

So the convention (at eleven o'clock and fifty-five minutes) adjourned.

Afternoon Session.

The convention met at 2 p. m., and was called to order by the president.

The PRESIDENT. Gentlemen. The special order of the hour is the question upon the engrossment for reading the third time of the judiciary bill.

Mr. ESTABROOK. Mr. President. It seems to me we are pretty near the termination of discussion on the educational article. I move that this special order be postponed and that we take up the article on education and schools.

Mr. HASCALL. Mr. President. I object to that, this has been postponed twice and is nearly completed, more so than the other, and as it is the special order, I think it ought to be taken up. If we wish to expedite matters we can order this bill to be engrossed so that it can go into the hands of the engrossing committee. Members have come here prepared to take up this bill at this time.

Mr. HINMAN. Mr. President. I will state that I am probably more interested in this than any other article remaining to be considered in the convention, and it is impossible for me to stay here more than two or three days and I hope this bill will be taken up while I am here. It may not be important for me to be here, but still I should like to cast one more vote on the right side.

The PRESIDENT. The question is on the amendment of the gentleman from Douglas (Mr. Estabrook.)

The motion was not agreed to.

The PRESIDENT. The question is on reading for the third time and engrossing the judiciary article.

Mr. WAKELEY. Mr. President. I desire to offer a proposed amendment to this article which I think is in order at this time. I will read it:

"Until the first day of January, 1876, the Supreme court shall consist of the five judges of the district courts elected as provided for in this constitution, four of whom shall be necessary to form a quorum. It shall have original jurisdiction in cases relating to the revenue, cases in which the state shall be a party, mandamus, quo warranto, habeas corpus, and such appelate jurisdiction as may be provided by law.

Each of said judges shall hold his office until the first day of January 1876, and until his successor shall be elected and qualified, and shall receive a salary of $3,500 per annum, and one of said judges to be selected by lot shall be the chief justice of the supreme court.

The legislature shall provide for an election in the year 1875 of the supreme court judges and judges of the district court provided for in article——of the constitution.

Sections two, four, five and six of Article——of the constitution shall be in force, from and after the first day of January 1876."

Now, Mr. President, I offer the following resolution:

Resolved, That the judiciary article, together with the above proposed provisions be referred to the committee on judiciary with instructions to inquire into the expediency of embodying the said provisions in the constitution, or to provide for submitting the same to the people to be voted upon separately.

One word, Mr. President. I desire that this should be fully considered by the convention. The proposition is that the five judges of the district courts shall comprise the supreme court for five years. I will not undertake to go over what has been said, but only state that in my opinion these judges will be able to perform all the duties enjoined upon them in the district courts and also the duties of the supreme court. I know there is a great desire to have a separate supreme court and I have no doubt it will be better than the nisi prius system but I think it is not necessary to make the change at this time. My best judgment is that if we shall proceed to elect in each of the five districts one of the best men that we can find for five years, that upon the whole we will have as good a supreme court as if we should create and elect a separate court now, and I desire whatever may be the judgment of this convention that the people of this state may have an opportunity to choose between those two systems. I think it is right and proper they should have that privilege. I will cite the case of the district in which I reside to establish the proposition that these judges will be entirely adequate to perform the duties of the district and supreme court. It is composed of the counties of Douglas, and Sarpy, and I undertake to say from a considerable knowledge of the business of that court, beyond a doubt whatever eighteen weeks of court in the county of Douglas, three terms of six weeks each, and two terms of one week each in Sarpy is all the time the judge of that district will be employed, and, sir, is it not very apparent that for the coming four years that judge will have abundant leisure in addition to discharging the duties of judge of the supreme court. What is true of that district is true of almost if not all other districts provided for in this constitution. I think the proposition should be submitted to the people of the state, and it can be done in such a way as not to interfere with the judicial article. I ask that it be referred to the judiciary committee for consideration.

Mr. LAKE. Mr. President. I believe if there was any one thing that was demanded more than another by the people of this state before and at the time of the calling of this convention to revise the fundamental law of the state it was that there be established an independent supreme court. That seemed to be the question that was uppermost in the minds of all. Not only attorneys, but all persons of intelligence throughout the state had come to the conclusion that the system under which we were operating in respect to our courts was an unwise one, and the desire seemed to be general that the court of last resort should not be influenced at all by any other considerations than those brought to bear at the time of the hearing of the cause in that tribunal. That the influence in the least degree of the judge who presided in the court below should not be felt in that high tribunal which is to pass finally upon the question of greatest interest to the people of the state, and I doubt whether there is a single paper in the state that has urged reasons why a constitutional convention should be held at this time, but what has placed front and foremost among the reasons therefor, the reorganization of our courts, and now, why refer this matter back to the judiciary committee for the purpose of taking into consideration a subject matter which the people of the state have denounced, which they have pronounced upon? If there is any question in respect to our constitution which has been passed upon by the people of the state over and over again, and with a certainty that cannot be questioned, it is this one in respect to the supreme court of the state. Why, I ask, refer this question back to the committee to take it again into consideration? It has already been considered by the committee, and they believe that in reporting for an independent supreme court, they have reflected the wishes of a very large majority of the people of this state, and unless this convention goes up hill just for the sake of sliding down again, and does things merely for the sake of undoing them it will vote down this proposition. It was most certainly true that this convention has over and over again during its session, declared in favor of an independent supreme court. I believe that to be the desire of a large majority of this convention, and in that they but reflect the sentiment of their constituents. Why this trifling? The reason which the gentleman urged—the want of ample time avails nothing, because had that been the only excuse, or only reason why the convention ought to have been called, it would have been urged for the purpose of increasing the judiciary, for the purpose of increasing the members of the court, so as to give them more time to devote to the business of the supreme court. But that was not it, Mr. President, it was against the system that the people of the state denounced their objections; it was against the determination of questions finally by a portion at least of the judges who passed upon those questions at nisi prius; it was for the purpose of relieving the supreme court entirely of an improper influence which it was feared might be felt, which perhaps it was feared had been felt in times gone by. Now, sir when we have it brought to our minds in so many ways and from so many sources that the people are hostile to a supreme tribunal made up of judges who passed upon the questions in the court below, why dally with this question longer, and why spend time over it? I do not know that I care to say anything more on this question. The gentleman says the district judges will have so much time. That is the very argument I have been advancing as a reason why there should be a less number of judges. The convention has passed upon that, however, and have determined in favor of five instead of four. With that I am content, because when gentlemen upon this floor deliberately pronounce in favor of a proposition which they all understand, I am for letting it rest unless there is some new light shed upon the subject, calculated to change the minds of members. That question has been considered carefully, and while it is true that the business of the state could be done by three or four district judges with a reasonable amount of labor, still there has been a consideration urged upon this floor that affected it; it is this, that the state is so large in extent, and some districts so large in territorial area, that the interests of the people seemed to demand, not in respect to the amount of business, but *in respect to their convenience,* that there be five instead of four, and the convention having pronounced in favor of five, I propose to leave it as it stands. I trust Mr. President, that the good sense of this convention will let this matter rest where it has been placed, with an independent supreme court, just where the people desired we should place it. If the convention will reduce the salary of the supreme judges to $3,000 per annum, just where the committee left it, they will do what I think is right, and the article will be just what it should be.

Mr. WAKELEY. Mr. President. After this expression from the chairman of the judicial committee, I will withdraw it.

The PRESIDENT. The question is upon the engrossing for reading a third time.

The motion was agreed to.

Mr. REYNOLDS. Mr. President. I wish to present a report from the committee on enrollment and engrossment.

The secretary read the report, as follows:

Mr. President—Your committee on engrossment and enrollment to whom was referred the executive article beg leave to report they have examined the said article and find it to be correctly engrossed.

H. M. REYNOLDS,
Chairman.

The PRESIDENT. The executive article will be taken up, read a third time and put upon its passage.

The secretary proceeded to read the article, when it was found that section twenty was omitted, and the article was ordered re-engrossed.

The PRESIDENT. The report of the committee on education is now before the convention.

Mr. PHILPOTT. Mr. President. I withdraw my original proposition and submit the following:

The secretary read the proposition as follows:

"The general government of the university of Nebraska and the management of the funds shall be vested in a board of regents, to be styled "The Board of Regents of the University of Nebraska," one member of which shall be elected in each judicial district by the electors thereof. Their duties, powers and terms of office shall be prescribed by law."

Mr. ROBINSON. I move that the words "under the direction of the legislature" be inserted between the words "shall" and "be."

Mr. PHILPOTT. I accept the amendment.

Mr. ESTABROOK. I would like to enquire whether this is not in direct conflict with section twenty of the executive article? Is it proposed to create a board by special provision of the constitution, to have charge of the funds of the university, and who are to be paid a salary, or paid nothing? Let us see what the system would be if under the management of a board of regents who do it for nothing. I find in a report of the treasurer of the university about how it would act. It is done for the honor of the thing, but somehow or other under this system of service we find that commencing on the tenth of January, 1871, and closing June 23rd, that the amount paid for mileage foots up the little sum of $1,132. One man gets $186, another $182, another $177.60, and so on. I do not see much difference between paying this sum and hiring a man.

Mr. HASCALL. I ask the gentleman from Lancaster (Mr. Philpott) to append something in regard to compensation to his proposition.

Mr. PHILPOTT. I will add the following: "They shall receive no compensation except actual necessary expenses."

Mr. PRESIDENT. The adoption of the proposed section in lieu of section nine will very considerably interfere with section eleven which was adopted in committee of the whole. It is claimed by the gentleman from Douglas (Mr. Estabrook) that the management of the university and the control of its funds will be placed in the hands of certain parties. In whose hands shall the general government be placed? It most clearly will be, as I stated this morning, in the hands of the state superintendent of public instruction and such other officers as the legislature shall direct. It appears to have certain officers already in existence, "Such other officers as the legislature shall direct." Who are those officers? Most clearly the officers whom the legislature shall direct; likely to be some of the executive officers. The objection I have against it going there is, the institutions will be in the hands of parties who will only hold office for two years, who will have their duties to discharge, and who I think will not be in a condition to give to the government of the university the attention it should receive at their hands. Now, as to the funds I propose shall be placed in the hands or the regents to be elected. It is no other fund than the management of the university fund, and what fund is that?

It has been clearly defined by our legislature, by the very first section of the act passed February 15th, 1869. It is as follows:

"Law of Nebraska, 1869, Sec. 21 of an Act to establish the University of Nebraska.

The funds of the university shall be two, towit: The endowment fund shall be kept by the treasurer in two accounts: That derived from the proceeds of the sale of lands donated to the state by the United States, "To establish and endow a state university" under the Act of Congress of April 19, 1864, in one account; and that derived from the proceeds of the sales of lands donated to the state by the United States, to provide "Colleges for the benefit of agriculture and the mechanic arts" in an Act of Congress approved July 2, 1862, in another account.

Section 11 of the report of the committee on education, school funds and lands. "The supervision of public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct. The superintendent shall be chosen by the qualified electors of the state in such manner as the legislature shall direct, his powers and duties shall be prescribed by law."

Now, this shows clearly to what fund reference is had, when we say the regents shall have the management of its funds, the funds derived from this source, and these funds are derived from the sales of the lands. The gentleman from Douglas intimated that it was the intention of this proposition to give the control and management of the lands of the state university into the hands of the regents. Certainly not. We simply state the management of its funds, leaving the sale of the lands exactly where they are reported by the amendment. And that report is as follows:

"The secretary of state, treasurer, attorney general, and commissioner of public lands and buildings shall exofficio constitute a board of commissioners for the sale, leasing and general management of lands and funds set apart for educational purposes, and for the investment of school funds in such manner as may be provided by law."

Now, with that section I propose to do nothing at all except to provide for the management and control of the university fund, not of the university land. I leave them just exactly where the gentleman has reported them. Now, the gentleman from Douglas certainly misapprehends the meaning and intention of the section, or else he would not have said it was the intention to place the management of these lands in the hands of the regents.

Again, some have intimated it would be appointing additional officers. Now, perhaps it will be. And if it is, I desire gentlemen to consider this. By the eleventh section which is now proposed, and has been adopted in the committee of the whole, the gentleman from Douglas intimates that the management of the university shall be in the hands of the legislature. Now, if they say that is to go into the whole management of persons to be selected by the legislature, then if we place it in the hands of regents elected by the people, I apprehend there will be very few more officers elected by the provisions of the section I propose, than under the provision of the eleventh section as reported by the committee of the whole.

Again, the gentleman from Douglas asks this question: "shall the fund be placed in the hands of amateurs, mere individuals, persons to strut about town?" It is no more placing them in the hands of "mere individuals and persons to strut about town," than to place it in the hands of the officers whom the gentleman has indicated by the eleventh section. I call the attention of gentlemen to the fact that the power and duty of the regents are to be prescribed by the legislature. I want to know if we may not reasonably expect that the legislature will throw around those regents safeguards by which those moneys may be safely kept? I have no doubt, and I am of the opinion that the control and management of the university funds ought to be in the hands of persons specially charged with it. It is provided that they shall have no compensation, except actual necessary expenses. The gentleman from Douglas has referred to the amount of expenses already incurred by the regents. It may be they have exceeded more than the actual expense. They are allowed twenty cents per mile each way. Now, it does not cost that much to travel in this country; and I propose that this section shall provide that they have only actual expenses. And the legislature shall establish a guard around them that these men shall report their expenses under oath. And I think we can allow them that if they take charge of the university and govern it well.

Mr. ROBINSON. I am inclined to think that this question is going to be a vast one. I must confess there is, to my mind, some force of reason in the objection raised by the gentleman from Douglas. Now, if I have the section properly, it is "that the secretary of state, treasurer, attorney general and commissioner of public lands and buildings, shall exofficio, constitute a board of commissioners for the sale, leasing and general management of lands and funds set apart for educational purposes, etc." Now, sir, I cannot, for the life of me, see how these two sections can stand together and make sense. If the board of regents have the control and management of the university funds, then certainly the board provided for in section twelve cannot have the management of those funds. My own view is that there ought to be a board of regents or some body who shall have the general management and superintendence of the affairs of the university—only a mere general management of its affairs, not its funds—furnishing the proper apparatus, fuel and all sorts of supplies. I would make special appropriations by law upon which they could draw upon for that purpose. But I am not in favor of trusting funds to the board of regents. They ought to be entrusted to the executive officers of the state, and these two sections, I think, could be made to stand together if we conferred upon a board of regents simply the general superintendence of the affairs of the university, and not the general management of its funds.

Mr. McCANN. Mr. President. It may be necessary or proper that I should say a word or two in regard to this board of regents. It seems to me that more than the actual necessary expenses have been incurred. I suppose the secretary of the board of regents has been governed by the law allowing those regents the twenty cents per mile in lieu of compensation and necessary expenses. It will be seen that some six meetings have been held since the first of January. I think two of those meetings were committee meetings; and the number of meetings has been rendered necessary by the fact that of the election of professors, and the fact that some two or three persons have declined on account of salary. I saw a letter today from Professor Hicock, of Illinois, declining the position to which he was elected on that account alone. That gentleman is well known to many in this convention as one of the ablest educators in the west and we congratulated ourselves upon securing the services of so eminent and good a man. But in his letter to the chancellor he stated that the salary would not pay the expense of making the change of coming to Nebraska, and meet the actual necessary expenses of his family He is receiving more than we offer him, and more than he at first proposed to accept. He is now at Knox university, Illinois. This circumstance rendered it necessary that there should be another meeting of the board. Then again, it will be borne in mind, that our university was reported to be in an unsafe condition, and the first day of our session, at the request of the members of the board, I nominated a citizen of Otoe county, and another citizen of Douglas county was nominated. A committee of three visited the university, but not being professional builders or architects they declined making a report. Then a commission, consisting of all architects—one from Otoe county, one from Douglas county, was constituted and their business rendered a meeting of the building committee necessary. I see one of the items charged, perhaps, by one or two of the regents was for that reason. I, sir, attended a meeting of that board. I see I am charged with having received mileage to $22. I should be entitled to $66, but I have not received that money. The actual necessary expenses of a person, when he consents to take this position, going to and returning from the capital, should be borne by the state. And I am glad that the gentleman from Lancaster has so wrought his amendment as to provide for that.

The PRESIDENT. The question is upon the motion to strike out——

Mr. PHILPOTT. Mr. President. I accept the amendment of the gentleman from Douglas (Mr. Hascall.)

The PRESIDENT. The question is upon the motion to strike out section 9 and substitute the following:

"The general government of the university of Nebraska and the management of its funds, shall, under the direction of the legislature be vested in a board of regents to be styled, "The Board of Regents of the University of Nebraska," one member of which shall be elected in each judicial district by the electors thereof; their duties, powers and term of office shall be prescribed by law, and they shall receive no compensation for their service, except actual expenses incurred in discharge of their duties."

The ayes and nays being demanded the secretary proceeded to call the roll.

The President announced the result—Ayes, 22; nays, 16,—as follows:

AYES.

Abbott,
Campbell,
Cassell,
Griggs,
Hascall,
Hinman,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
McCann,
Majors,
Maxwell,
Myers,
Philpott,
Price,
Reynolds,
Robinson,
Sprague,
Thummel,
Tisdel,
Towle,
Weaver.—22.

NAYS.

Ballard,
Curtis,
Estabrook,
Gibbs,
Gray,
Griggs,
Lyon,
Mason,
Neligh,
Scofield,
Shaff,
Speice,
Stevenson,
Thomas,
Vifquain,
Wakeley.—16.

ABSENT AND NOT VOTING.

Boyd,
Eaton,
Granger,
Grenell,
Ley,
Manderson,
Moore,
Newsom,
Parchin,
Parker,
Stewart,
Woolworth,
Wilson,
Mr. President.—14.

So the substitute was adopted.

The secretary read the next section, as follows:

Sec. 10. Schools for the benefit of the deaf and dumb and the blind shall be fostered and supported.

Mr. MAXWELL. Mr. President. I move to strike out the word "schools" and insert the word "institutions."

The convention divided and the motion was agreed to.

Mr. PHILPOTT. Mr. President. I move to amend the section by inserting after the word "blind" the words "and idiots."

Amendment not agreed to.

The section was adopted.

The secretary read the next section, as follows:

Sec. 11. The superintendent of public instruction, secretary of state, treasurer and attorney general shall constitute a board of commissioners for the sale, leasing and general management of all lands and funds set apart for educational purposes, and for the investment of school funds, in such manner as may be provided by law. The superintendent of public instruction shall be the presiding officer of the board. Any three members shall constitute a quorum. Such board shall also have the general management and control of the affairs of the state normal schools, and the state university and agricultural college, and shall take the place and do the duties of regents of said institutions. Such board shall also have the general supervision of public instruction in the state.

Mr. GRIGGS. Mr. President. I move the section be stricken out.

The motion was agreed to.

The secretary read a substitute offered by Mr. Hinman, as follows:

"The legislature shall provide by law for an enumeration of the inhabitants of the state in the year 1875, and at the end of every ten years thereafter and at their first annual session after such enumeration and every two years thereafter the legislature shall apportion the members of the senate and house of representatives according to the number of inhabitants excluding Indians, not taxed, and soldiers and officers of the United States army and navy; provided that when no enumeration shall have been made within one year previous to said apportionment it shall be made in proportion to the number of votes polled at the general election immediately previous to said election; provided, however, that in the first or present apportionment each organized county in the state having at the last enumeration 600 inhabitants shall be entitled to at least one representative which shall not be diminished at any subsequent apportionment."

The PRESIDENT. The question is on the adoption of this substitute for section eleven.

Mr. ROBINSON. Mr. President. I move to strike ont the words "in such manner as the legislature may direct."

Mr. WEAVER. Mr. President. I move to strike out the whole section.

The motion was not agreed to.

The PRESIDENT. The question is on the motion of the gentleman from Lancaster (Mr. Robinson.)

Mr. TOWLE. Mr. President. I will suggest that it is unnecessary to say in this section in such manner as the legislature may direct as we have provided for that in the executive article.

Mr. MAXWELL. I would like to hear the section referred to, the executive article, read.

Mr. ESTABROOK. Mr. President. I don't think these duties are provided for in the executive article.

Mr. HASCALL. Mr. President. The first section of the executive refers to the duties of officers. I call for the reading of it.

The secretary read the section, as follows:

Sec. 1. The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor of public acounts, treasurer, superintendent of public instruction, attorney general and commissioner of public lands and buildings, who shall each hold office for the term of two years, from the first day of January next after his election, and until his successor is qualified and elected; provided, however, that the first election of said officers shall be holden on the Tuesday succeeding the first Monday in November, 1871, and the officers then elected shall each hold his office for the term of one year, or until his successor is elected and qualified. They shall, except the Lieutenant governor, reside at the seat of government during their term of office, and keep the public records books and papers there, and shall perform such duties as may be prescribed by law.

Mr. MAXWELL. Now, Mr. President, I would like to have the substitute read.

The secretary read the substitute for section 11, as follows:

Sec. 11 The supervision of public instruction shall be vested in the state superintendent and such other officers as the legislature shall provide.

The superintendent shall be chosen by the qualified electors of the state in such manner as the legislature shall direct; his powers and duties shall be prescribed by law.

Mr. HASCALL. Mr. President. I move to strike out all after the words, "as the legislature shall provide."

The motion was agreed to.

The PRESIDENT. The question is on the adoption of the substitute as amended.

The substitute was adopted.

The secretary read the next section, as follows:

Sec. 12. The secretary of state, treasurer, attorney general, commissioner of public lands and buildings shall exofficio constitute a board of commissioners for the sale, leasing and general management of all lands and funds set apart for educational purposes, and for the investment of school funds, in such manner as may be provided by law.

The twelfth section was adopted.

The secretary read the next section, as follows:

Sec. 13. No sectarian instruction shall be allowed in any school or institution supported by the public funds set apart for educational purposes, nor shall the state accept of any grant, conveyance or bequest of monies, lands or other property to be used for sectarian purposes.

Section thirteen was adopted.

The PRESIDENT. The question is on the adoption of the article as amended.

The article was adopted.

The PRESIDENT. The question is on the engrossment of article on education just adopted for its third reading.

The article was ordered engrossed for a third reading.

Committee of the Whole.

Mr. HASCALL. Mr. President. I move that we now go into committee of the whole on the report of the legislative committee.

The motion was agreed to.

So the convention went into committee of the whole, Mr. Scofield in the chair.

The CHAIRMAN. You now have under consideration the report of the legislative committee.

Mr. TOWLE. Mr. Chairman. I move that we dispense with the reading of the article and take it up section by section.

The motion was agreed to.

The secretary read the first section.

Section 1. The legislative authori- shall be vested in a senate and house of representatives.

The section was adopted.

The secretary read the next section, as follows:

Sec. 2. The enacting clause of all bills shall be: "Be it enacted by the Legislature of the State of Nebraska," and no law shall be enacted except by bill. No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the legislature, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered upon the journal. No bill shall embrace more than one subject, and that shall be expressed clearly in the title.

Mr. HASCALL. Mr. Chairman. The section we adopted the other day stated that if there were more than one subject contained in a bill, it should be void only as to the subject not expressed in the title.

The CHAIRMAN. That motion did not carry.

Mr. KIRKPATRICK. Mr. Chairman. I would like to have the chairman of the committee give a little information in regard to some phraseology in this section. I understand it would require an absolute majority of both branches of the legislature to vote on a law before it is passed. I think that a quorum ought to constitute a legislature, and ought to be competent to legislate and enact laws. Now, sir, if the concurrence of an absolute majority of both houses of the legislature is required, in many cases laws will not be carried at all. I think that provision is in the old constitution.

Mr. TOWLE. Mr. Chairman. I think the word assent is proper. It is taken from the constitution of New York, Iowa and Missouri. We find in nearly all constitutions that in no case shall a bill pass without a majority of the members elected.

Mr. HASCALL. Mr. President. I find section fourteen of the New York constitution which we adopted in the committee of the whole before says, "no law shall embrace more than one subject, which shall be named in the title." That is clear, concise language, there is no mistaking it. I therefore move to strike out all after the word "journal" in fifth line and insert the following:

"No law shall embrace more than one subject, which shall be named in the title; but if the title contain only one subject, the law shall be valid as to that, and void as to all other subjects. No law shall be revised, altered or amended by reference to its title only, but the act revised, or the section or sections thereof, as altered or amended, shall be re-enacted and published at length."

Mr. MYERS. Mr. President. It is not very material to me whether the amendment is adopted or not. I think the section is amply sufficient for all practical purposes, that no bill shall embrace more than one subject. The New York section is wordy and amounts to nothing more. This report was considered by the committee from the basis that was submitted to it in the former committee of the whole, and the committee had no knowledge of the passage of the clause named by my colleague (Mr. Hascall). It was not acted upon. The copy the committee acted upon I believe. But as it stands it covers the entire subject. It prohibits the passage of more than one subject in one bill.

Mr. HASCALL. There is no provision, that I have discovered, that would require a section or a bill that is amended to be re-enacted, and as I asked the gentleman a question he refuses to answer, it is fair to suppose that there is no such provision in this report. It ought to be there, and no legislative article would be perfect without it. The difficulty in searching up laws wherein the acts are not re-enacted at length, and the evils resulting from it, are so great we ought to have it.

Mr. LAKE. Mr. Chairman. Upon full consideration, a few days ago, in committee of the whole, this house declared their preference for the section which has been referred to—section fourteen of the New York constitution. That section obviates one difficulty which has been experienced by the members constituting the district and supreme courts of this state ever since the organization of the state government. The language of our old constitution, like the language of this section now under consideration, is that no bill shall contain more than one subject, which shall be clearly expressed by its title. Now, there are conflicting decisions as to the effect of this provision, some courts declaring it is mandatory, others that it is merely directory, etc. In order to obviate this uncertainty I hope that section fourteen of the New York constitution which provides that "no law shall embrace more than one subject, which shall be named in the title, but if the title contain only one subject the law shall be valid as to that and void as to any other." That makes it very clear. There can be no omnibus laws passed under such a provision. Whereas, under the old constitution and by the terms of this provision reported by the committee the legislature may, perhaps, do as they please—obey the provision or not. Such decisions have been made. We find them in the books of reports, and now for the purpose of making the constitution clear on this subject and that we may have a provision that shall be obeyed and not left to the option of the legislature, it was thought by the committee, the other day, that the New York section should be, and it was adopted. Again, this section from the constitution of New York provides, further, "but if the title contain only one subject the law shall be valid as to that, and void as to all other subjects." That is, if it is attempted by the legislature, after having stated a subject in the title to a bill to go on and, in therein include other matters under that head, that the law nevertheless, shall be valid as to the subject mentioned in the title, and void as to the residue. This will make it imperative upon the courts what kind of a ruling they shall make when a law, objectionable in this regard is brought before them for consideration. Then this other provision that we find in this section, the substance of which was taken from our old constitution, is a very important one. It is, "No law shall be revised, altered, or amended by reference to its title only; but the act reviewed, or a section or sections thereof, as altered or amended, shall be re-enacted and published at length." Now, this provision, as I have read from the New York constitution, is far more precise and definite than the similar provisions we find in our old constitution. According to its provisions, there was some difference of opinion as to whether the act should not contain the old act, as it read before amended, and also as it would read after having been amended. That, however, was settled in the courts of this state to mean just what is declared in the constitution of New York—that is that the act revived or the section or sections as altered or amended, shall be re-enacted and published at length. I think that this fourteenth section of the New York constitution is clearer and better than any provision on this subject which I have seen. It coincides precisely with what the decision of our supreme court has been on these questions, when they have arisen under our old constitution. But as I have before said, there have been conflicting decisions. The courts of Indiana decided one way and the courts of Ohio another. In order that it may be settled, that the lawyers of the state, the legislature and all concerned, may understand what is the effect of this provision, it had better be made clear, and put in concise and certain language; and I hope this language in the fourteenth section of the New York constitution will be retained as reported in the committee of the whole house the other day.

Mr. MYERS. Mr. Chairman. I have a few words to say with reference to this subject, notwithstanding the exposition of my colleague on my right, (Judge Lake.) I still think this bill is not only ample for the confirmation of all courts, but also for the people. That no bill shall embrace more than one subject, and if it embraces more than one, it falls, it must neccessarily fall, because it is in violation of this provision. The difference between a bill and a law is this—that the bill must conform to this part of the constitution before it can become a law. It is similar to a law as applied and used in this section. "No bill shall contain more than one subject." Consequently as a necessary sequence no law can contain more than one subject, and that shall be expressed clearly in the title. I am opposed, Mr. Chairman, to the New York provision for the reason that it cumbers the statute books with repealed laws; that you will have large and ponderous volumes of laws recited and marked, when a mere note in reference to them would be amply sufficient for every intelligent reader, whether he be a lawyer or not. I think, sir, that is every object of the New York law requiring the act to recite what we repeal, when it could simply be referred to. The supreme court of this state, I believe has given a decision in favor of the provision in this constitution—that the law was not required.

Mr. LAKE. The courts of this state have decided that a new law or an act shall contain that portion of the old law which was revived, as amended or as revived.

Mr. MYERS. I do not hold that it is necessary to have that in.

Mr. ROBINSON. It is perfectly clear, I think, to every man, who has had experience under those constitutions where it is allowable to amend by mere reference to it, that this amendment ought to prevail. According to this section, it will become the duty of the legislature to amend any act by stating that the act is hereby amended, by striking out such and such words. You are compelled to have a volume containing the amendments and a volume containing the thing before amended. But if this amendment prevails you will have a volume with the law just as it is. It prevents a good deal of logrolling in the legislature. I hope the amendment will prevail.

The amendment was agreed to.

The section as amended was adopted.

The Chairman read the next section:

Sec. 3. The legislature shall provide by law for an enumeration of the inhabitants of the state in the year one thousand eight hundred and seventy-five, and at the end of every ten years thereafter; and at their first annual session after such enumeration, and also after each enumeration made by the authority of the United States, the legislature shall apportion to the number of inhabitants, excluding Indians not taxed, and soldiers and officers of the United States army and navy.

Mr. GRIGGS. I move to insert, after the word "year," in the second, line the words "eighteen hundred and seventy-two."

The PRESIDENT. The question is upon the amendment of the gentleman from Gage (Mr. Griggs.)

The committee divided and the amendment was not agreed to.

Mr. ABBOTT. Mr. Chairman. I move to insert after the word "apportion," in the fourth line the words "members of the legislature according to."

The amendment was not agreed to.

Mr. ESTABROOK. Mr. Chairman. I move to insert, after the word "thereafter," in the second line, the words "and at no other time." It will be remembered that there was a good deal of discussion on this particular thing in the old constitution. In fact there was a very important law suit grew out of this at one time.

The CHAIRMAN. The question is upon the amendment offered by the gentleman from Douglas (Mr. Estabrook.)

Mr. HINMAN. Mr. Chairman. I wish to offer a substitute for the section, and as it is difficult for the secretary to read my writing, I will read it myself:

"The legislature shall provide by law for an enumeration of the inhabitants of the state in the year 1875, and at every ten years thereafter, and at their first annual session after such enumeration, and every two years thereafter, the legislature shall apportion the members of the senate and house of representatives according to the number of inhabitants in the state, excluding Indians not taxed, and soldiers and officers of the United states army and navy; provided that when no enumeration shall have been made within one year previous to said apportionment, it shall be made in proportion to the number of votes polled at the general election immediately previous to said election; provided however that in the first or present apportionment, each organized county in the state having at the last enumeration 600 inhabitants, shall be entitled to at least one representative, which shall not be diminished at any subsequent apportionment."

I move its adoption, Mr. Chairman.

The CHAIRMAN. The question is upon the adoption of the substitute offered by the gentleman from Lancaster (Mr. Hinman.)

Mr. MAXWELL. Mr. Chairman. It seems to me the section reported by the committee is about as good as we can get. It seems to me that if we limit this in this manner, we may, perhaps, do injustice. It seems to me it is taking power from the legislature that it may do gross injustice; may be counties of 10,000 inhabitants would have no representation. If our population should continue to increase as it has I trust that the section as reported by the committee will be retained.

Mr. ABBOTT. Mr. Chairman. It it be in order, I now move that the further discussion upon this section be deferred until after the report of the committee on legislative apportionment.

Mr. HINMAN. Mr. Chairman. I feel interested in this matter. The gentleman has spoken of the number of representatives that will be added by the adoption of this substitute. I find it will add one representative to York county and one to Stanton county, only. Now, if we are likely to reach apportionment very soon I would be willing to postpone. In view of the great increase of our population in the new counties I say this matter should be attended to. I say, sir, many of these counties have doubled in population since the present apportionment was made, and yet they are not represented on this floor. They propose to put off the enumeration and apportionment until 1875. Is it right to those persons who shall come here to make their homes in our state during those five years: have they no rights? And the western counties which are filling very rapidly. I think the older portion of the state should allow them a little liberty further at least, than an apportionment only once in ten years.

Mr. HASCALL. Mr. Chairman. As I stated on a former occasion I think the whole question might be reached in this way. Now, if we will go on and increase the number of members of the legislature so as to have a basis for apportionment, the apportionment will have to be made. The plan is this, that all the counties in the state, that shall by the last census, have 500 inhabitants shall have one representative, and that those that have less shall be grouped together in a convenient district and give them a representative and then exclude those counties from the general apportionment of the state; then to obviate this difficulty, with counties not yet recognized or limits defined or no population reported, that if they shall hereafter obtain a population equal to one-half the number fixed as the ratio of representation, then an enumeration may be had at the expense of the county to ascertain the population. This is a liberal proposition and if we do this every new county will be represented and that too without being attached to a larger county that will absorb them. I see no way of apportioning the state in 1875, or at any other time except on the proportion of the population.

Mr. MANDERSON. Mr. President. The provision as reported by the committee provides for an enumeration in 1875, and every ten years thereafter, and upon that enumeration an apportionment of the members of the legislature according to the number of that population. Now, we all find a difficulty growing out of this, that counties organized between these enumerations will be left out, and how to remedy this is the question now. I think the suggestion of my colleague will correct this difficulty. I propose if the gentleman from Lincoln (Mr. Hinman) will withdraw his substitute to offer the following, to be added to the section:

"Any organized county without direct representation in the legislature may upon application through its county commissioners to the governor of the state, procure by him the appointment of three census takers, who at the expense of the county shall take a census thereof and return the same to the governor, and if it appears that the population of such county is equal to the number required at the last enumeration for one member of the lower house of the legislature, then such county shall be entitled to one member thereof, and a special election shall be called therefor."

Mr. HASCALL. I would suggest that you make it three-fifths.

Mr. MANDERSON. I will do so.

The PRESIDENT. The question is on the motion to postpone by the gentleman from Hall (Mr. Abbott.)

The motion was not agreed to.

Mr. MANDERSON. I now ask the gentleman from Lincoln to withdraw his substitute.

Mr. HINMAN. I will withdraw it.

Mr. MANDERSON. Now, Mr. President, I offer my amendment.

The PRESIDENT. The question is on the amendment of the gentleman from Douglas (Mr. Estabrook) to insert in line four after the word "states" "or at any other time."

The amendment was agreed to.

The PRESIDENT. The question is on the amendment of the gentleman from Douglas (Mr. Manderson.)

Mr. ROBINSON. Mr. President. I would like to know what the gentleman means by the words "direct representation?"

Mr. MANDERSON. I do not know that the language is sufficiently explicit. If there is anything I dislike it is float representation, it is worse than no representation, this does not mean float representation, but I mean by it a county from which there is not already a representative in the legislature that if the county has no representation, that representative being a member or citizen of a county from the float. It may be represented as part of a district, that I do *not consider direct representation,* and it is that I seek to cover. If the language is not sufficiently explicit it should be changed.

Mr. ROBINSON. Mr. Chairman. I would like to suggest another thing. We are about to provide that the number of legislators will be limited to thirty three at the utmost in the senate and one hundred in the house. Now, sir, when you have got your hundred in the house and thirty three in the senate, how are you going to get this extra man in?

Mr. HASCALL. This number will be fixed probably at a less number than that, that is the maximum.

Mr. ROBINSON. Are you going to provide that all future legislatures shall keep below the maximum?

Mr. HASCALL. It is their duty to do so, we may say "except as otherwise provided" when we come to that section.

Mr. KIRKPATRICK. Mr. Chairman. This amendment proposes to give to each county in this state a direct representative, and that each county shall take its own census. It strikes me that is rather an objectionable mode.

Mr. ABBOTT. This census is to be taken by men appointed by the governor.

Mr. KIRKPATRICK. Suppose the basis was 1000 inhabitants and a county had only 600, that being three-fifths of a thousand it would be entitled to a representative, although another county might have 1000 or 2000, but they get no representation upon their excess of population.

Mr. MANDERSON. I have changed the wording of the amendment so that it reads "any organized county not constituting an entire representative district, may upon application through its county commissioners, etc."

Mr. WEAVER. Mr. Chairman. The objections I see to the proposed amendment is this. In the first part it says "any county not composing an entire representative district." Suppose a county in connection with some other county makes an entire representative district; we will suppose one thousand inhabitants entitles that district to a representative, we will suppose further that this county connected with the other county has 600 and the other county has 400. This county by showing that she has 600 inhabitants is entitled to a representative, while this county in connection with another county has already one representative, will you turn him out? There would be two representatives in a population of 1000 inhabitants.

Mr. LAKE. Mr. Chairman. This subject of representation is giving us a good deal of trouble, and I doubt whether we shall hear anything suggested that will be better than the provision in our own constitution which has been incorporated in the report of the committee in this section. Now, sir, it may be said that for a time, if some such provision as this is not incorporated in the constitution, there may be portions of the state, new counties, that may be unrepresented in the legislature. I think if the plan that has heretofore been acted upon is continued, such will not be the case. If a county just about commencing its settlement is attached to another for legislative purposes, it is represented, it has a voice in the election of representatives, and it will be but a short time, if the population should increase so as to entitle it to a full representative under the apportionment, it will be but a short time they will have to wait before they will be entitled to this full representation which is now under consideration. It may be asked, why subject them to this inconvenience for any length of time? Mr. Chairman, I do not consider it any great inconvenience, they have a voice in the elections of the person who represents them, although perhaps being united with a more powerful neighbor their voice cannot entirely control the matter of who shall represent them, but still they can choose between the candidates, and can use their influence in such a manner as to make it felt for one candidate or another, and the experience of the past has demonstrated that such communities while suffering in certain cases, generally make their voice felt in the selection of representatives, occasionally it may be true that such is not the case, but generally they have done so. Now while these new counties are compelled, perhaps, under the present state of things to wait for a certain length of time, if we should adopt this system which my friend General Manderson is contending for, would work a hardship to counties which have but one representative upon the floor, that have increased perhaps, much more rapidly in population than have these new counties that have been before without any independent representative. Suppose for instance a county which has heretofore been attached for representative purposes, has increased three or four times as rapidly as a new county has increased and supposing 1000 is the ratio of representation, the county to which the new organized county is attached has increased its population up to 2000. Now, why say that this new organization should be represented, that its people should have a voice; and that the 1,000 increase in the other county be left entirely unrepresented? There is no more injustice in the one case than in the other, and it would seem to me, that if you provide for this fractional representation for one county, you ought to provide for the same representation in all the others. I believe, Mr. Chairman, that the system the gentleman from Douglas is endeavoring to incorporate into this constitution will lead us into inextricable confusion. It will be productive of mischief far greater than those which have obtained under our present system. I believe in leaving this matter of new apportionment to the legislature. It must be expected that these new counties will be subjected to greater difficulties and embarassments, for a short time. It is however for but a short time. Apportionments will be made under this provision of the constitution at such time as it can be done intelligently—that is, after each enumeration of the inhabitants. There are only five years between each enumeration; and in the meantime, if these new communities are attached to other counties for legislative purposes, I think no great hardship will be worked. It must be borne in mind that such counties generally are attached and united together, which alone are not entitled to a representation under the apportionment. It may be that a county will grow so rapidly that within two years she would alone be entitled to a representative upon the floor of the house of representatives. But might not the population of the county to which she is attached be increased much more rapidly? Very likely, and if the thousand persons who shall settle in such new county are entitled to a representative, ought not the other 2,000 be entitled to a representative also?

Mr. MOORE. Mr. Chairman. If I understand this matter properly I will offer an amendment—"and thereupon such county shall cease to be a part of such representative district." Mr. Chairman. I never was disposed to insist upon my rights derogatory to the rights of others. It is not my nature to do so. And if I ever do get a little too far in that line it is because I am driven to it. There seems to be a general disposition to look after me on the part of some members of this body unexpectedly it may be; and I thank them for it, and should opportunity occur I will remember them for it; while others seem not to be so—perhaps it is because they look at things entirely different. But I must say this that the people of the west, since I came into this state, have always complained that the were not properly represented. Their representatives have been instructed time and again to have some thing better done for them, if possible. Nothing better has been done, so it is said. If members of the legislature have come here and done all they could for the west, under the provision which was in our constitution heretofore, then I say that provision is not sufficient to govern this country in the future. And we want a better one if it has not been done as it should have been. It is possible some members are to blame for the want of proper performance of duty. I must say this—that five years' time is a long time for a county to lay out of representation. It is remarked here that you are represented. That is true in a certain sense, but not in the sense the people, east or west, wish to be represented. Instead of a basis of something like 2,000 being represented by the members of this convention there are members from the west that are representing from 8,000 to 12,000. Do you suppose they believe that to be honest and fair and just? Would you think, if instead of living in Douglas county, you lived in York county, and other western counties, would you think it just and fair and right? It would be with you as it was with the lawyer and the farmer about the bill—it would change sides instantly. I believe this amendment proposed by the gentleman from Douglas does seem to cover more ground; and it will give those counties who increase in population rapidly some chance to have an increased representation; and I think it is right. I will take, for instance, my own county. When the last apportionment was made, we numbered, perhaps, about 604. I received a note from our county clerk the other day placing the population at not less than 1,500, and his opinion was that it was 1,800. Now, if we had to run another year or two, and go on increasing as we have in the past, we not only lose one member but several. That is not right, and gentlemen will not ask us to submit to that. They will not insist upon us having that kind of representation. I think not, at least. If it was the reverse, I should feel like giving a direct representation. And I believe that the majority of this body—three-fourths of this body—will give it to us. I think that this additional amendment which I have offered will cover the grounds objected to by one of the gentlemen present—that in a case where there were 600 in one county and 400 in another, he says the 400 would have also a representative. It is hardly probable where two counties lie contiguous to each other one will increase so rapidly and the other be very much behind; and I would suppose the representatives which had been elected to represent both counties should represent the district.

Mr. HASCALL. If the gentleman will withdraw the proposition, I have one that I think will meet the case.

I propose to say, at the end of the section, "The county thus securing representation shall thereafter be detached from any representative district, including the same."

Mr. MOORE. I accept that.

Mr. MANDERSON. This amendment was drawn up by me quite hastily. I have lost the original, and I think the amendment offered by my colleague (Mr. Hascall) meets largely the objection urged by the gentleman from Richardson (Mr. Weaver) and I therefore accept it, and urge its adoption.

The committee divided, and the amendment was agreed to.

Mr. WEAVER. Mr. Chairman. The objection is not covered at all. It stands right square where it did. The amendment leaves it in just the exact shape it was in before. The gentleman from York thinks the objection urged is not a very strong one. Let us suppose it in a different shape. That 1,000 are entitled to a representative, and 900 of those inhabitants were in one county and 100 in another further west, making just the 1 000. Suppose the county having the 900 applied for a representative, the other county may have grown two or three hundred and now is this county to be left without any representative? Now, sir, is this county to be left without a representative? I am satisfied that it is but reasonable that these counties which have thousands, should have a representative when one, two and three hundred inhabitants may have a representative, in other counties.

Mr. ROBINSON. Mr. Chairman. I think this obviates some danger and difficulty. I will take the same illustration that was given by the gentleman from Richardson (Mr. Towle). Suppose there are two counties taken together—one contains six hundred and the other four hundred inhabitants; when the one which contains the six hundred shall have secured the three-fifths additional it will be entitled to a separate representative. Now what is to become of this other county—to what other county shall it be attached? It seems to me we are going to get into the mud. Here is a county attached to an adjoining county, and neither of them contains sufficient population to entitle them to a separate representative; one of them increases in population until it has a sufficient number, then they have got to be separated, now what are you going to do with the county which is left.

Mr. HASCALL. Mr. Chairman. That can be explained very easily. We are working only on one part of this constitution now; when we get through with the entire constitution, this can all be made clear. We propose to group together these small counties. When one county has sufficient population, under this three-fifths provision application will be made to the census taker and when the fact of this increase is ascertained, the county is immediately detached from the other counties forming the representative district to which it belonged.

Mr. LAKE. (To Mr. Hascall.) What will you do if those counties which constitute the remainder of the district have not sufficient population to entitle them to a representative?

Mr. HASCALL. I would reach that. I say this proposition detaches this county from the district and the district remains intact, the same as if you had not detached territory.

Mr. WEAVER. (To Mr. Hascall). Suppose that the county that is detached has a representative, but the counties remaining, not having enough population to entitle them to a representative. Do you propose to leave them without one?

Mr. HASCALL. I propose that all parts of the state shall be represented. I have known serious evils to result by the passage of laws which impose burdens upon portions of the state, which would have been avoided if they had representation and have determined that all localities should be represented in our legislature, if I could do anything to bring about that result, so that they could show what they were entitled to. When we formed our districts here, we had to put an apportionment in the constitution. It is an imperative necessity that the apportionment committee should make an apportionment of the state, consequently the whole state will be divided off into senatorial and representative districts. We will give counties that have a sufficient number of inhabitants, according to the last census, a representative; then those counties that have not this population, will be grouped together in districts and when it is ascertained that one of these is entitled, upon the basis proposed, to have a representative it will have it. It will immediately become detached from the original districts, but the districts remain.

Mr. LAKE. (To Mr. Hascall.) Suppose the remainder of the district shall not have population sufficient to entitle it to representation?

Mr. HASCALL. That is the point I was coming to. It may happen thus in a very few cases, but I think when it does, the older counties in the state can well afford to go without one representative.

Mr. LAKE. (To Mr. Hascall.) Suppose that the person who is elected to represent this district lives in the county that is detached?

Mr. HASCALL. That is just as plain as any proposition can be. We members are elected every year and consequently this election is for the next legislature. The legislators are elected in the fall, and the legislature meets in January and it is not reasonable to suppose—in fact there could be no election, if the census was taken after the general election and before the meeting of the legislature. If there was a general election every two years and this census was taken every year then the gentleman's position might be tenable. I say this; that it is barely possible that such a thing might occur, as the gentleman suggested, but it is not probable. If a county contained more than three-fifths, on this ratio at the time this apportionment was made, it would form a district by itself. We must consider this whole article together—we must consider that if a county contains more than the three-fifths provided for here, it would have a representation of its own, and you would have more than two counties together to make a representative district. Consequently when this county was detached in this manner, it would still leave two or more counties in the district, and if the district as it remains should be allowed its representative, even though it should not have quite the required number of inhabitants, no harm would result; and I think the older counties can well afford to allow this, because it would diminish their representation but a very small per cent. It would not interfere with the balance of the state in any respect whatever. It was found, last winter, that almost the entire western portion of the state was without representation; all that vast region was almost without representation at all. To be sure there was Gerrard, of Platte, in the senate, with Beals, of Hall, Goodin, of Saline, and Jenkins of Jefferson, in the house, but this was but a small representation for the extent of territory included in their districts. Now I say, this for these gentlemen,—that so far as they knew the wishes of the people, they did their duty. It was impossible for them to know the wishes of the entire district they represented. I say, we should avoid such things. Gentlemen may talk about "confusion" in this article, but I see no confusion in it. There can be no confusion in it,. if you go through and make this article conform to the other parts of the constitution. We will, under the first apportionment we make, give to counties that contain over five or six hundred inhabitants a representation of their own. When a county considers that it has a population which entitles them to a separate representation, the census takers will take the census, and give it a separate representation. When we make our apportionment, if it is found that old counties have this three-fifths over the number required, for a representative, we will give them that extra representation; if they have not this extra population, they will not be entitled to this extra representation. We must take the whole article together; it is very easy to make these particular sections conform to each other, then we intend to follow this up by adopting this general principle and will produce order out of chaos, instead of having chaos result from this proposition,—as gentlemen have suggested here.

Mr. TOWLE. Mr. Chairman. It appears to me that the further we have got into this byway of amendments and substitutes, the further we have got into the mud. Now, it is a principle of all law that representation and taxes go together. It will be admitted that in those portions of the state lying along the river there is the most wealth, the taxes are large and from them come the most of the money into our state treasury, hence it follows that they should have a representation that shall be able to say aye or no to that which proposes to affect their interests. I am willing to give these western counties a proper representation, but I deny that they should have an advantage over eastern and older counties. I will move to reconsider the amendment offered by the gentleman from Gage, that permits another apportionment to be made in 1872, for you must remember that the apportionment made by this convention will be on the census taken before this. Each county should be entitled to the members which they have population for and there should be an enumeration every two years if it is necessary; therefore I move for a reconsideration of the vote by which the amendment of the gentleman from Gage (Mr. Griggs) was defeated.

Mr. HASCALL. A motion to reconsider is not in order in the committee of the whole.

Mr. PRICE. Mr. Chairman. I would like to have this question deferred. I move that we rise, report progress and ask leave to sit again.

Mr. ROBINSON. I move to amend that the committee rise and report back this particular section with the recommendation that it be recommitted to the committee on legislative apportionment.

Mr. PRICE. I will accept that amendment.

Mr. GRAY. Mr. Chairman. If this section is to be referred back and go now to the apportionment committee there is another feature I would like to have embodied in it, it is this, "There shall be no float districts or districts made up of excess of population, or several districts either for senatorial or representation, and counties shall not be united in senatorial or representative districts of a disproportionate number of inhabitants." I will ask to have this referred to the apportionment committee. If the gentleman will withdraw his motion to allow me to offer it as an amendment.

Mr. PRICE. I have no objection to withdrawing my motion to allow it to go to the apportionment committee.

Mr. HASCALL. That is not necessary, it can go as it is.

Mr. GRAY. Mr. Chairman. I will withdraw it.

The CHAIRMAN. The question is on the motion that the committee rise, report section three of this article back with recommendation that it be referred to the committee on legislative apportionment.

The committee divided and the motion was agreed to.

Mr. SCOFIELD. Mr. President. The committee of the whole have had under consideration the report of the legislative committee and have instructed me to report progress, and ask leave to sit again and recommend section three of this report be referred to the committee on legislative apportionment.

Adjournment.

Mr. MAXWELL. Mr. President. I move that we now adjourn until 8 o'clock this evening.

Mr. GRIGGS. Mr. President. I would like to have the gentleman withdraw his motion until I offer a resolution. (Leave.)

Resolutions.

Mr. GRIGGS. Mr. President. I

have a resolution I wish to have referred to the committee on legislative apportionment.

The secretary read the resolution, as follows:

"Provided, that the legislature shall also apportion the members of the legislature in the year 1872, and at every two years thereafter, according to the whole number of votes cast for the office of governor at the election next previous to such apportionment."

Official Reporters.

Mr. ABBOTT. Mr. President. I wish to offer a resolution.

The secretary read the resolution, as follows:

Resolved, That the official reporters of this convention be allowed one day's pay for reporting each night session of this convention.

Mr. TOWLE. I move to amend by saying "half day's pay."

Mr. ROBINSON. Mr. President. I hope the resolution will be withdrawn for a few days. I do not think there is a disposition to have them work without pay.

The ayes and nays were demanded.

The secretary called the roll, and the president announced the result: Ayes, 24; nays, 17, as follows:

YEAS.

Curtis,
Gibbs,
Granger,
Gray,
Griggs,
Hascall,
Hinman,
Kilburn,
Lake,
Lyon,
McCann,
Manderson,
Moore,
Myers,
Neligh,
Philpott,
Reynolds,
Sprague,
Stevenson,
Thummel,
Towle,
Wakeley,
Weaver,
Wilson.—24.

NAYS.

Abbott,
Ballard,
Campbell,
Cassell,
Kenaston,
Kirkpatrick,
Majors,
Mason.
Maxwell,
Price,
Robinson,
Scofield,
Shaff,
Speice,
Thomas,
Tisdel,
Vifquain.—17.

ABSENT AND NOT VOTING.

Boyd,
Eaton,
Estabrook,
Grenell,
Ley,
Newsom,
Parchin,
Parker,
Stewart,
Woolworth,
Mr. President.—11.

The PRESIDENT. The question is on the adoption of the resolution.

The ayes and nays were demanded.

The secretary called the roll and the president announced the result: Ayes, 19; nays, 23, as follows:

YEAS.

Curtis,
Granger,
Gray,
Griggs,
Hascall,
Hinman,
Kilburn,
Lake,
McCann,
Manderson,
Myers,
Neligh,
Philpott,
Reynolds,
Stevenson,
Thummel,
Towle,
Wakeley,
Wilson.—19.

NAYS.

Abbott,
Ballard,
Campbell,
Cassell,
Gibbs,
Kenaston,
Kirkpatrick,
Lyon,
Majors,
Mason,
Maxwell,
Myers,
Price,
Robinson,
Scofield,
Shaff,
Sprague,
Speice,
Thomas,
Tisdel,
Vifquain,
Weaver.—23.

ABSENT AND NOT VOTING.

Boyd,
Eaton
Grenell,
Ley,

Newsom,	Stewart,
Parchin,	Woolworth,
Parker,	Mr. President.—10.

Mr. MASON. Mr. President. I now move to reconsider the vote by which the resolution was lost, and lay that motion on the table, so that this question cannot be sprung when members are absent from the convention.

Mr. WAKELEY. I am in favor of reconsidering the motion, but not laying it on the table.

Adjournment.

Mr. ABBOTT. Mr. President. I move we adjourn until nine o'clock tomorrow morning.

The convention divided and the motion was not agreed to.

Mr. GRAY. I move we adjourn until eight o'clock this evening.

The convention divided and the motion was not agreed to.

Mr. MYERS. Mr. President. I move the convention do now adjourn.

The convention divided and the motion was agreed to.

So the convention at six o'clock and thirty minutes adjourned.

THIRTY-THIRD DAY.

Wednesday, August 2, 1871.

The convention met at ten o'clock and was called to order by the president.

Prayer.

Prayer was offered by the chaplain as follows:

"Father of all mercies, God of grace, we pray for Thy blessing upon this state and upon this nation; that the exercise of Thy love and the power of Thy truth may appear; and we pray Thee that Thy blessing may rest upon this convention today in all its workings. May it please Thee to deliver us from the slavery of selfishness. Amen.

Reading of the Journal.

The journal of the last day's proceedings was read and approved.

Reports from Standing Committees.

Mr. VIFQUAIN. Mr. President. I wish to submit a report from the committee on education.

Education.

The secretary read the report, as follows:

Mr. President. Your committee on education have the honor to report the following as a proposition to be submitted separately, in lieu of section four of the original article.

To be Submitted Separately.

"The Legislature shall require by law that every child of sufficient mental and physical ability, between the ages of eight and sixteen years, unless educated by other means, shall in all cases where practicable attend a public school supported by the common school fund, for some definite length of time each year, to be fixed by law, and may establish a school or schools for the safe keeping, education, employment and reformation of all children under the age of sixteen who are destitute of proper parental care, or who are growing up in mendicancy, ignorance, idleness or vice, which schools shall constitute a part of the system of common schools."

Mr. VIFQUAIN. Mr. President. I move the proposition be referred to the standing committee on schedule.

Mr. MAXWELL. Mr. President. I think it is better to have it referred to the committee of the whole, to see whether they will approve it or not. I make that motion.

The PRESIDENT. The motion to refer to the standing committee takes precedence.

The motion was not agreed to.

The PRESIDENT. The question is on referring to the committee of the whole.

The motion was agreed to.

Military Affairs.

Mr. VIFQUAIN. Mr. President. I wish to submit a report from the standing committee on military affairs.

The PRESIDENT. If there is no objection to this report it will be read a first and second time by its title, ordered printed, and referred to the committee of the whole,—so ordered.

The report is as follows:

ARTICLE——

MILITIA.

Section 1. The militia of the state of Nebraska shall consist of all able-bodied male persons resident in the state between the ages of 18 and 45, except such persons as now are or hereafter may be exempted by the laws of the United States or of this state.

Sec. 2. The legislature shall, at their first session after the adoption of this constitution, provide for the organization, equipment and discipline of the militia, and shall therein conform as nearly as practicable to the regulations of the government of the armies of the United States.

Sec. 3. Militia officers shall be chosen or appointed as follows: Captains, subalterns and non-commissioned officers shall be chosen by the written votes of the members of their respective companies. Field officers of regiments and separate battalions by the written votes of the commissioned officers of their respective regiments and separate battalions Brigadier and major generals shall be elected by the written votes of the officers of their brigades and divisions respectively. The staff-officers will be selected by the general-in-chief, division, brigade, regimental, battalion and company commanders respectively for their different commands; provided, that in time of war such right of election shall be suspended and all commissioned officers shall be appointed by the governor, and non-commissioned officers by the regimental commander, on the recommendation of their respective company commanders.

Sec. 4. All militia officers shall be commissioned by the governor and may hold their commissions for such a time as the legislature may provide.

Sec. 5. The military records, banners and relics of the state shall be preserved as an enduring memorial of the patriotism and valor of Nebraska, and it shall be the duty of the legislature to provide by law for the safe keeping of the same.

Sec. 6. The office of adjutant general of the state of Nebraska is hereby created and he shall be elected in the same manner and at the same time that other state officers. His salary and his duties shall be prescribed by law at the first session of the legislature after the ratification of this constitution.

Sec. 7. No person or persons conscientiously scrupulous of bearing arms shall be compelled to do militia duty in time of peace, provided such person or persons shall pay an equivalent for such exemption as may be determined by law.

Legislative Apportionment.

Mr. TOWLE. Mr. President. I wish to submit a report from the committee on legislative apportionment.

The secretary read the report, as follows:

"Mr. President; We the undersigned members of the legislative apportionment committee, to whom was referred section three of the legislative article, together with the proposed amendments, hereby report the following as a substitute for such section and recommend its incorporation in the legislative article. Signed,

ED. S. TOWLE.
J. H. KENASTON.
R. F. STEVENSON.
O. A. ABBOTT.

"The legislature shall provide by law for an enumeration of the inhabitants of the state in the year 1872, and at the end of every two years thereafter until after the year 1880, when it shall provide for an enumeration in the year 1885, and every ten years thereafter, and at their first annual session after such enumerations, and also after the enumerations made by the authority of the United States; but at no other time. The legislature shall apportion the senators and representatives according to the number of inhabitants, excluding Indians not taxed and soldiers and officers of the United States army and navy; provided, however, that the legislature in making such apportionments may in the case of any county not forming an entire representative district, apportion a member of the legislature to such county, if its population exceeds three-fifths of the ratio for one member."

Mr. GRIGGS. Mr. President. I move that the report be referred to the committee of the whole.

Mr. HASCALL. Mr. President. I will have a minority report from this committee ready to submit when it comes up in the committee of the whole, and I ask leave of the convention to submit it at that time.

(Leave.)

The motion to refer the report to the committee of the whole was agreed to.

Hours of Meeting.

Mr. BALLARD. Mr. President. I have a resolution I wish to offer, and I move that it be adopted.

The secretary read the resolution, as follows:

Resolved, That hereafter the regular hours of meeting of this convention shall be 8:30 in the morning and 1:30 in the afternoon.

Mr. ABBOTT. Mr. President. I think that two o'clock is as early as we can get together after dinner. I move to amend that part of the resolution to two o'clock.

Mr. WEAVER. Mr. President. I move to amend to 8 o'clock in the morning and two o'clock in the afternoon.

Mr. BALLARD. Mr. President. I accept that amendment.

The PRESIDENT. The question is on the adoption of the resolution as amended, the ayes and nays are demanded—Mr. Secretary call the roll.

The president announced the result,—ayes, 33; nays, 10, as follows:

AYES.

Abbott,
Ballard,
Campbell,
Curtis,
Gibbs,
Granger,
Gray,
Griggs,
Hascall,
Hinman,
Kenaston,
Kilburn,
Lyon,
McCann,
Majors,
Mason,
Maxwell,
Moore,
Myers,
Newsom,
Philpott,
Price,
Reynolds,
Robinson,

Shaff,
Sprague,
Stevenson,
Thummel,
Thomas,
Tisdel,
Towle,
Vifquain,
Weaver.—33.

NAYS.

Boyd,
Estabrook,
Kirkpatrick,
Lake
Manderson,
Neligh,
Parchin,
Scofield,
Speice,
Wakeley.—10

ABSENT AND NOT VOTING.

Cassell,
Eaton,
Grenell,
Ley,
Parker,
Stewart,
Wilson,
Woolworth,
Mr. President.—9.

So the resolution was adopted.

Legislative Apportionment—Minority Report.

Mr. HINMAN. Mr. President. I move we go into committee of the whole on the reports of the committee on legislative apportionments.

Mr. HASCALL. Mr. President. Before the motion is put I wish to present a minority report of that committee.

The secretary read the report, as follows:

"The legislature shall provide by law for an enumeration of the inhabitants of the state in the year one thousand eight hundred and seventy five, and at the end of every ten years thereafter; and at their first annual session after such enumeration, and also after each enumeration made by the authority of the United States, but at no other time, the legislature shall apportion the members of the legislature according to the number of inhabitants, excluding Indians not taxed and soldiers and officers of the United States army and navy. The legislature may provide by law that any organized county not constituting an entire representative district and having a population to be ascertained by law of more than three-fifths of the ratio required for a representative and upon which the last apportionment of representatives was made, shall constitute a single representative district, and be entitled to one member in the house of representatives. A county thus made a representative district shall thereupon be detached from any other representative district including the same, but no county shall be given representation as aforesaid, if the remaining counties of the representative district from which it is proposed to detach the same shall not contain a population greater than three-fifths of the ratio aforesaid.

Mr. HASCALL. Mr. President. I move that the report be referred to the committee of the whole.

The motion was agreed to.

Resolution.

Mr. SCOFIELD. Mr President. Before the motion to go into committee of the whole is put, I wish to present a resolution, and move its adoption.

The secretary read the resolution, as follows:

Resolved, That the convention extend the privileges of the floor of this hall to Col. Thomas Doane.

The motion was adopted.

Committee of the Whole.

The PRESIDENT. The question is on going into committee of the whole on the reports of the committee on legislative apportionment.

The motion was agreed to.

So the convention went into the committee of the whole. Mr. Scofield in the chair.

The CHAIRMAN. Gentlemen, you have under consideration section three of the legislative article, together with reports of the committee on legislative apportionment on several amendments referred to them.

Mr. GRAY. Mr. Chairman. I desire to inquire whether the minority report is not substantially the same as the majority report with the exception of the times of making the apportionment and census.

Mr. HASCALL. No sir. The majority proposes taking a frequent census, and base the apportionment purely upon the population and ignore the new counties entirely.

Mr. KIRKPATRICK. There is no difference between these two reports. The majority proposes an apportionment every two years of representatives of the people up to 1880. The minority report proposes to take the census every five years, but provides that the county claiming representation may take the census under their own authority, and upon that it will be the duty of the legislature to give them a representative based upon the basis fixed in the law.

Mr. BALLARD. I move the majority report be adopted.

Mr. HASCALL. I hope that will not be adopted hastily. I only want the convention to fairly consider both reports, and then if they come to the conclusion that a majority report is better for the interest of the state, then, of course, I shall cheerfully acquiesce. The first objection to the majority report is the expense of taking the census. We have only to refer to the cost of taking the United States census to see how much it will cost for us to take our census. It will not take as much as it will to defray the expense of one session of the legislature. A federal census has just been taken, and it proposes to keep up that mode of taking the census until 1880; then it proposes to apportion the state upon the population as shown by those state censuses. There is expense as one objection. Another objection is keeping this question of apportionment always in the legislature. We know it is always an exciting question, and always consumes much time. Another objection, and that is the one which I claim the section reported by the minority will obviate. That is when you go to take the census as proposed by the majority report, it does not give the relief to the new county which they claim. It puts them right down on population and does not consider the importance of the minority. For instance if it is based upon the proposition purely, there may be a county which contains 800 or 900 people, and the ratio may be 1,600 or 1,700, and it will probably require it to be attached to several other counties. This minority report proposes that in the apportionment we will make, and that applies to the majority report, that we will give counties that have six, seven or eight hundred population, a representative anyway; and afterwards the minority report proposes that whenever they get a population to be ascertained by law to be greater than the three-fifths ratio required at the last apportionment for representatives, that then they shall have a representative in the legislature. I am satisfied if this majority report is adopted it will give no satisfaction whatever and will work differently to what the projectors anticipate. It is a new project and has been written up hastily. They may have taken a notion to this majority section, and will find that that section does not give the relief they anticipate, and that properly attaches. It will be a failure and will not give the satisfaction they expect.

Mr. TOWLE. Mr. Chairman. The main, central idea kept in view in the majority report was to give as near as possible an equal distribution of representation all over the state according to population. We believe this report is based upon just principles, and we believe and expect the convention will adopt that instead of the minority report. The objection to the majority report is the expense attending the taking of the census. Now, the constitution of Iowa within the past twenty years has been almost co-incident with our own; she has been a western state and is rapidly settling, a portion of it heavily populated; and the same question we are urging today, and the same difficulties we are experiencing now, Iowa has experienced for twenty years, with all its turmoils and troubles. They have finally adopted the principle as the only true and perfect method, as far as their experience and ability dictated, was to take frequent census. It may be possible that it is expensive, but at the same time it is certainly proper that these western counties should have a proper representation, and it is more than paid up in the justice we are meting out to our friends in the west.

Now this does not provide that the census shall be taken in this way for a greater length of time than eight years, or at the rate of once in every two years, after that we fall back upon the five years' principle—that is the United States census every ten years, and the state census coming in between these each ten years. At the end of the eight years it is likely that these counties west of us will be pretty well settled up, or at least will not, after that time, increase in population so fast as they have for the last few years. It is asked how will you take this census without a great deal of cost? I would have the assessors of the precincts take it. They are acquainted with the people of their precincts, and the work can be done by them at little expense, and but little alteration is required in their assessment blanks to do this. The expense will be nothing compared to the benefits we expect to flow from this new enumeration. Let us see how the work would be done. The county commissioners would ask for another representative, and when it is found their population is sufficiently large, it will be granted. The assessors can be authorized to take the census of their respective precincts, as they are attending to the assessment of the property. The machinery proposed by the amendment, Mr. Chairman, is too cumbersome. It is such that it cannot be adapted to the people. The people of this state want something less complicated and heavy. We should have a general apportionment, and should divide up the whole state and give to each portion of the state a representation according to the ratio of population. I believe that the report of the majority committee is proper and adapted to the wants of the people of the state in a fair and adequate manner.

Mr. MYERS. Mr. Chairman. These propositions are now before this committee, and I think the result wil be that we will fall back upon the section which is proposed by the committee, and as it is in the old constitution of our state, which provides for the taking of the census every ten years. This is the provision in the constitution of almost every state in the union. Now, sir, I am opposed to these frequent enumerations for the whole state, or parts of the state. Counties that are not entitled to representation alone, can form portions of districts where they can live in peace and harmony. Why be in such a hurry to be represented here, when they can be accomodated in all their just rights and claims; when they can be attached to other counties and get all their just dues? I hope this committee will fall back upon the original section, as I object to it on the score of expense, and I object to it upon the score of partiality. The population might increase in the old counties as well as in the new, and I would have all treated alike.

Mr. KIRKPATRICK. Mr. Chairman. Some men believe that the apportionment of the state should bear some proportion to the amount of property in the state—that taxation and representation should have some relation to each other. I think there should be a new apportionment made in order to do anything like justice to the new counties. I approve the majority report. I think if the census could be taken without great expense it should be taken before every session of the legislature. I know, sir, that it will cost something, but the old saying is true that "eternal vigilance is the price of liberty." I am assured that the extra expense of taking the census will not be more than five dollars to each precinct.

I object to the minority report, although I believe in giving to these new counties of our state their full representation, and even more, because they are constantly increasing in population. But, sir, there are two objections to it. First because it will cost more to take the census of these counties than to take the census of the state, but it is proposed to have the section to be benefited to bear the expense. But, sir, I am willing to have our representation increased upon an impartial assessment.

Mr. MYERS. In the opinion of the gentleman was the assessment taken in 1870 by the United States marshal an impartial one?

Mr. KIRKPATRICK. I think it was, sir. I have no charges to bring against any census taker, but I believe there was a little attempt made to correct that taking, and we found a little inaccuracy in it. But sir, not so much as was found in some other states; and it showed that there was no intention to misrepresent the state; but the objection I was going to allude to, Mr. Chairman, was this—I am willing to give to the counties having three-fifths a full representation. I think there is no doubt but that they are clearly entitled to that and base their claim on rapid increase of their population. Now, sir, between the two I certainly prefer the majority report.

Mr. WEAVER. Mr. Chairman. I have an amendment to offer to the majority report. To strike out all after the word "apportionment" in the provision and insert the following: "Shall apportion to counties containing three-fifths of the ratio, one representative and all counties having a surplus of three-fifths of the ratio shall be entitled to one additional representative."

Mr. HINMAN. Mr. Chairman. I came from that good old state of Pennsylvania, as well as some other gentlemen on this floor, and I, too, admire her sturdy opposition to change or anything new; and her persistent vote for Genl. Jackson. I used to vote for Jackson until I moved out here to Nebraska, when I learned he was dead. (Laughter.)

Mr. MYERS. Genl. Jackson is dead but his principles live forever.

Mr. HINMAN. Well, Mr. Chairman. I wish to say that I appreciate the pleasant feeling of the members of this convention from the east toward the west. I don't think I have that amount of bile in me that has been attributed to me. We come here as suppliants, and simply beg of you to give us some plan by which we can be represented in this legislature, so that when a proposition is sprung upon the people, there may be some person here to watch the interests of these new counties and say whether it is proper or not. I never have been a member of a legislature, but I have seen one or two and know how some things are done there. Now, how are laws passed in the legislature? A proposition is sprung from a particular district in its own interest and the question is asked by others, "will that hurt anybody. Is it a proper proposition?" And, sir, if it does not appear that it is wrong, these representatives vote according to the representations made to them; for this reason, these western districts should have a representation here, to say whether a measure is proper or not. Now, Mr. Chairman, in the last legislature of all that northwestern country and nearly the entire land from Grand Island west was represented in the lower house by a gentleman from Saline, Mr. Goodin, To get around to him you have to travel about 500 miles to this capital; and then out here to Saline county. To send a communication to this hall from the extent of the district to reach him it would have to come a distance of 500 miles. We will suppose a proposition is sprung connected with that extreme portion of his district. We will say it is sprung on a day, and they make a motion to suspend the rule, and it is passed. How can the people know, or get word to their representative as to whether that proposition is right or not? In the latter end of the legislature, propositions are frequently offered and rushed through in a day. Suppose we take the effect of this, we were represented in the senate of the last legislature by Mr. Gerrard of Platte county, 400 miles from some of his constituents.

Mr. MAJORS. I rise to a point of order. It is this; we are not now discussing the apportionment that was heretofore in existence. I cannot see what that has to do with the adoption of this resolution.

Mr. HINMAN. Have I not the right to illustrate a principle that has been applied in the past?

The CHAIRMAN. The gentleman will be allowed to proceed.

Mr. HINMAN. I do not want to talk about that $32,000 steal, I know it hurt somebody. I am going to pass that and try to provide for the future. I wish to provide a check for any future steals which may arise. The stable doors were open and the $32,000 is gone. It is the thousands and millions in the future I wish to reach and provide for. Between Lincoln and Hall counties there is 100 miles of the Union Pacific railroad, on which not a dollar of tax has ever been paid. There is Dawson and Buffalo counties between which has received no tax. Suppose those two counties were represented in this hall, they could say to that legislature, "You must provide a rule by which we can get that tax." There is $1,000,000 of property untaxed in that country. Do you care for reaching it and getting these sinews of war to carry on the legislature? There is about 120 miles of country west of us that will not pay another dollar of tax. Well, now, Mr. Chairman is it material whether we provide for that? Is it material or not whether we throw in checks around the legislature? Is it material whether we have this great prosperity represented here, so as to provide certain means by which the state shall get these taxes? They are counting a cost of $100 in taking this census, while at one sweep was lost $32,000. Year after year, at one per cent, the state is losing $16,000 between Lincoln and Hall counties, because they are not represented at your legislative halls. I grant you, gentlemen, have the power. We come here as suppliants, begging you to help sustain us, and hold up our hands instead of doing like the man who saw a little boy recover an apple from a large boy; another large boy come along, pitched into him and got away that apple from the small boy, and they divided and ate it. That is what you do here, when a little boy tries to get his rights, another big boy turns around and helps the big boy. That is the result of this system. Shall we have that old trammelled system? An apportionment is taken in 1875, and this increase of population which the chief justice has said will double in two years, and which passes into the new country, it passes by your doors and goes into the new counties, and builds them up and enriches your state, will you extend to them these rights and privileges of representation. Other railroads besides the Union Pacific are running through our state. Others have been projected, and will be projected in a very few years, not only from the south up the Republican, but upon the Blue, up the Loup Fork, and up the north fork of the Platte river. Those mighty powers have got to be looked after. They ought to bear the burdens of this state. How will you reach them? That is the question. There is not a gentleman here who will say we will not tax this property; we want to reach out and get it. You are willing for us to furnish the grease to grease the wheels of a grand coach but not for us to ride in it. You had better be careful you do not destroy that support you expect from us.

Mr. PRICE. I hope the report of the majority of the committee will prevail. I am in favor of a frequent enumeration of the population, and believe it can be done with very trifling expense to the counties in which it is had. I think that the idea of a special enumeration of any particular county is likely to cost a considerable item of money; more than it would to have an enumeration made by the assessors at the time of assessing property. By this process of taking the enumeration and making an apportionment every two years, I believe the wants of the western portion of our state will be abundantly satisfied. There is a probability of some three or four railroads being built towards the western part of the state, one up the valley of the Republican, another up the Little Blue, another on the Big Sandy and one west from this city, passing through the portion of country I am best acquainted with. South of the Platte, west of this, there is a probability of several railroads centering near Fort Kearney, and some of the counties out there may have a population demanding two or three representatives within one year from today. As an instance of the rapidity with which railroads are progressing westward and counties are settling up, I wish to call your attention, that since the enumeration was last had, we have four counties organized. Webster county was organized as late as April 19th. Another county which, at the time this apportionment was made showed a population of eight citizens, is now the organized county of Nuckolls. Franklin county, has also made an appropriation for a separate county, the county of Thayer, the county I reside in, has also been organized since; I propose to have something tangible to prove to this convention that it has a population of at least 1,000. In these, Mr. Chairman, you have an illustration of the rapidity with which these counties south of the Platte, west of Lincoln are settling up. I think the report of the majority of the committee is preferable to anything we have had.

Mr. STEVENSON. I represent a portion of this country that extends from the Missouri river to the base of the Rocky mountains, including within the district a great many counties, with a population ranging from one thousand up to three; and there is not a county in that whole district that has in time past been hardly represented in the legislature of this state; and I think it is high time that something was done in this convention in order to give these counties representation. All I ask is that they be fairly represented. Not that every organized county with but fifty or seventy-five inhabitants, have a representative, but that a liberal representation will be allowed that a ratio may be established so that these counties having a certain number of inhabitants shall be represented. Now, I take it that the majority report of this committee is very liberal; that it allows the legislature to make an apportionment every two years; allows a census to be taken, and from that census it allows an apportionment to be made, and that a county having three-fifths of the ratio be entitled to one representative. I hold that it is nothing more than right or just, and that it ought to apply not only to these new counties, but that it ought also to apply to every county throughout the state. I do not believe in putting a section in this organic law and make it apply to specially benefit counties to the exclusion of any other county. If any of these new counties have a sufficient number according to the ratio, to be represented, I want to see them have representatives, but I also want to see if it goes into the counties of Douglas, Burt, Otoe, Cumming, or any other county, whether it be in the north, the south, the east or the west—I want to see that number of individuals have a representative in this hall. And I think we ought, in justice to ourselves, and to those who are to come into this state in after years, to give them all the benefit of a good and liberal representation. It is a notorious fact that there are appeals coming from all over this state asking for representation in the legislative hall, and should we pass these numerous cries for help from Macedonia—pass them by idly? No, sir, we ought to take into consideration the demands of this people, and if it is possible, give them representation. By this majority report we intend to give them representation. I take it that the report of that committee is just and right. That we should, every two years for the next eight years, have a census taken for this state. It cannot and will not cost very much. We ought not to take into consideration the cost. Of course it is due to the people, notwithstanding the expense, that they be represented in these halls, and we should not look materially to the expense of it, although I hold it is not going to take much, from the fact that the census can be taken by the assessors throughout the precincts of every county. It is not like taking the United States census. It is not necessary to take the age, and occupation, but simply the names. Get the number, and from that number let us form our basis of representation. What does the minority report try to do here? It tries to put into our organic law a special clause applying to new counties and none others whatever. Now, sir, I hold, as a member of the convention, that we are here to oppose that. We are making laws to apply to the state of Nebraska, and not to any particular county. But I am in favor of giving these new counties all they can ask and that is that they have three-fifths of the ratio. Then they are entitled to a representative, but if any other county having one, has the same ratio, they ought also to be entitled to another. And if it is necessary, we must attach two or three counties in one district. But that district wil not last but a short time. The report of the majority of this committee says the apportionment shall be made every two years. Well now, it is not long for one of these districts to wait. We have had to wait for five, six, seven and ten years, and then not be represented in the representative hall. We only propose to make these counties wait for two years and if they have three-fifths of the ratio they can have a representative here. Is there anything unjust about that? I am pretty sure that if we adopt the report of the majority of this committee, those counties, especially in my district, will be satisfied with it, because they can ask in justice and in equity; and I hope, Mr. Chairman, that the report of this committee will be adopted.

Mr. SPRAGUE. I do not propose to occupy but a moment or two. I had made up my mind, Mr. Chairman, that I would vote for the minority report of this committee, and for this reason—that I believe it to be more liberal to the new counties than the majority report, and I came to the conclusion that the older counties could well afford to be liberal in favor of the new counties, and for that reason I had concluded to support it. But I find in the arguments which have been delivered here, especially from those who live in new counties, or the immediate vicinity, that they seem to favor the majority report, and certainly it strikes me if that is what suits them the older counties should be satisfied. Taking the argument of the gentleman from Cuming (Mr. Stevenson) as a basis, it is simply an apportionment in accordance with the number of the inhabitants. He says the same rule should apply to the new as to the old counties. Now that does not give the new ones any advantage whatever over the older one. If his views are right we might as well adopt the report of the committee on legislative. You adopt the same rule in regard to the old as the new. I believe that this report of the majority has been more liberal than the argument of the gentleman from Cuming. I shall be in favor of the majority report.

The CHAIRMAN. I would state that there is a motion to strike out this portion of the majority report, and insert that the last part will read, "the legislature in making such apportionments, shall apportion the counties so that counties having three-fifths of the ratio shall have one representative, and all counties having an excess of three-fifths of the ratio, shall have an additional representative."

Mr. SPRAGUE. So far as I am concerned, I shall oppose the amendment upon the ground that it is not as liberal to the new counties as it should be.

Mr. STEVENSON. Is it your object to give the new counties an advantage over the old, or to get the new counties represented?

Mr. SPRAGUE. My object is to give them representation, so that they shall have that advantage. Now, sir, as I was about to say before, I had made up my mind to support the minority report because it was more favorable to the new counties than the majority. It gives the same apportionment to the older counties for the term of five years and the increase to the new counties. But as the members from the new counties seem to be in favor of the majority report I shall support it.

Mr. WEAVER. I believe the motto of our state is "Equality Before the Law." I am not here to show liberality to individuals or anything else, but to do exact justice. If three-fifths of the ratio entitle a new county to a representative why should not that same surplus entitle an old county to a representative? If it takes 1.000 to secure a representative in an old county, and in an old county there be 1,600 and in the new county there be 600, the new county goes in for a representative. Now here is a county with 1,600, has only one representative. In there justice and equity in this? I think not. Almost three times as much represented by one representative. Now suppose there be twenty new counties with a population of 600 each. Those populations go in with a representation of twenty in number, while the old counties with 1,600 each would go in with a similar representation, and when I see that members who live in the western portion of the state are not in favor of the amendment I have offered, from the very fact of their opposition I shall press my amendment to a vote.

Mr. WAKELEY. Mr. Chairman. I presume it is nearly impossible to come to a vote upon this measure, and I will say but a few words. While it is true that population should form a basis of representation it is also true that it is impossible to apportion upon that basis. Some counties will have more than they are entitled to and others will have less. I have happened to have, in my life, several years experience as a member of a legislative body, and I have had occasion to know, Mr. Chairman, the great importance to new and thinly settled counties of having representatives upon the floor. They have local interests to represent, and as a general thing they have more of these local interests to take care of in legislative bodies than older counties whose internal affairs are settled. Now. sir, I believe it is our duty to adopt some system which, so far as is possible, will allow these counties representation. I prefer the report of the minority committee simply for one reason, and that is that it does not seem to me to be wise to change our apportionment every two years, and raise a commotion in the legislature with regard to the general apportionment of the state. I see no serious objection to taking the census of the state next year, but it seems to me that after we provide for taking the census next year and making a new apportionment after the census in 1873, 1876 and again in 1881, after the census is taken by the United States, no serious injury will be done to any portion of the state. I am disposed to be liberal to these new counties and think this convention has been so far, and as I represent, in part, one of the most populous counties in the state, I think we, in the older counties can afford to do this. One representative more or less is a matter of but little importance to us; our interests are well cared for by the members we send here.

Mr. GRIGGS. Mr. Chairman. I move that the committee do now rise report progress, and ask leave to sit again.

Mr. STEVENSON. I hope, Mr. President, this matter will be settled now.

The PRESIDENT. I hear no second to the motion. The question is upon the adoption of the amendment offered by the gentleman from Richardson.

Mr. MASON. Mr. Chairman. I think the rule adopted by the majority committee is just. The state is increasing in population very rapidly. I know of a single county where within a year the population has increased sixteen hundred. There are other reasons why I think the majority report is just. It is a well - known principle that consolidated interests —whether of people or of capital are abundantly able to take care of itself. I hope Mr. President, that the majority report will prevail.

Mr. MOORE. Mr. President. I will not detain you but a moment or two. I don't believe in long speeches even if I was able to make them; but as I sit here strange things come into my brain. Some days since my friend from Otoe, (Judge Mason) sympathising with my lowly condition, (being forced as I was to remain at the capital after adjournment, while the greater number of the members had gone to meet the happy hearts and bright eyes of loved ones at home), extended to me a kindly invitation to go with him and take a look at "the beauty and the chivalry," as well as the works of nature, and of art of the goodly Otoes. I went. "Swift as the winged winds," the hours passed by, as we were driven furiously along the highways and byways, from hill top to valley, from orchards bowed beneath their weight of golden fruits, to the broad fields of tasselling corn "waving and laughing in the sunlight of heaven." Soon, but not too soon came the Sabbath of rest. "So calm, clear and beautiful that naught but God was to be seen in heaven."

My good friend the Chief Justice (and I am proud to number him in my list of friends) took down his Bible, (Byron) conducted me to a beautiful grove—one of "God's first temples ere man had learned to hew the shaft or lay the architrave," and sitting down upon the soft velvet lap of mother earth, and read, a portion of which came flitting strangly through my brain as the gentleman from Pennsylvania (Mr. Myers) was repeating his stereotyped speech. "An old man with an old soul, and both extremely blind." I do not know why these words should recur at such a time. But it is true that whenever the gentleman from that state begins to speak, I immediately go into the spirit and float away down, down "The back avenue of time," beyond the out houses of the present into the valley and shadows of the past and her monumental pile and storied urns repeat the tales of long ago. When that good friend of Charles II theed and thoued his way from the old to the new world; when Franklin lived and spun his homely yarns in country barrooms before the blazing log fire. The time when

"Lo the poor Indian, whose untutored mind
Sees God in the clouds, and heard him in the winds,
Sat in his rude wigwam smoking the pipe of peace, or, musing fell asleep by the murmuring stream."

(Laughter.)

It is strange these thoughts should pass through my mind at this time. The state of Pennsylvania is a great state; it has been a great state for a long time, and it will be a great state for a long time to come no doubt, (Laughter.) The children of that great state are taught to respect old institutions. They never adopt any new ideas; they never change, but follow along in the old grooves. If they had hanged Quakers in Pennsylvania years ago, they would hang them yet (Laughter.) The old doctrine of "no expense, no money, no pay" seems to run in the heads of some of these children yet. When we talk about the little expense of taking the census of this state every two years the gentleman who never speaks without referring to the great state of Pennsylvania, immediately objects to the proposition. Now, I am told that the census of this state can be taken by the assessors at an expense of not over $500. Now, gentlemen, if such a small expense will put a quietus upon this thing, I say let us have it taken. We know that great complaints have been made that the western counties are not represented here as they should be; however, they are represented by a good looking young man who is able to speak for himself. He has said he represents about half the state. I thought I represented about half myself (Laughter). Now we have a good many people out west who don't seem to appreciate our last legislature. We had some very good men in that body—some of them are members of this convention, and I think they are very good men; but the people of those western counties were not represented properly, and they think if they had been here things would have been different. Now, I am in favor of allowing them to send their wise men here, if they have them. If they send fools, they will do you no harm (Laughter) and if they send intelligent men they will do you good. We are all Nebraskans. We came here for the purpose of building up a state—but first for the purpose of building up ourselves. By the way, if we do this, we will build up the state, and if we allow these western counties the representation they ask, we all share in the benefit of it, and I am in favor of the proposition.

Mr. MASON. Mr. Chairman. I am more firmly convinced now than ever that this proposition should pass, for the especial benefit of my friend from York (Mr. Moore) who mistakes Byron for the Bible (Laughter).

Mr. KIRKPATRICK. I think the Chief Justice is wrong.

Mr. MYERS. Mr. Chairman. I remember that occasion to which the gentleman from York (Mr. Moore) has referred so eloquently. We had the Book and Byron both along, but the gentleman didn't know the difference.

The CHAIRMAN. The question is on the amendment proposed by the gentleman from Richardson (Mr. Weaver.)

Mr. TOWLE. Mr. Chairman. I will accept that amendment.

The CHAIRMAN. The question is on the adoption of the majority report, as amended.

The majority report was adopted.

Mr. GRIGGS. Mr. Chairman. I move the committee rise, report progress and ask leave to sit again.

The motion was agreed to.

In Convention.

Mr. SCOFIELD. Mr. President. The committee of the whole have had under consideration the report of the legislative committee and have instructed me to report progress and ask leave to sit again.

Adjournment.

Mr. PRICE. Mr. President. I move we adjourn.

Clerical Assistance.

Mr. MANDERSON. Mr. President. I have a litle bill here from Jas. O. West, the deputy auditor. It is known that the deputy auditor is not permitted to hire assistance, but in getting up the reports and abstracts ordered by this convention he has paid out of his own pocket and cannot get any pay for it unless allowed by this convention out of the funds appropriated to it. I therefore move the account be allowed.

The secretary read the account, as follows:

"Constitutional convention:—

To Jas. O. West, Dr.,—For services of extra clerk in preparing abstracts and reports for the convention $50.00.

I certify the above bill to be correct.

JAS. O. WEST,
Dept. Audt.

The bill was allowed.

Adjournment Again.

The PRESIDENT. The question is on the motion to adjourn to 2 o'clock.

The motion was agreed to.

So the convention (at twelve o'clock and twenty minutes) adjourned.

Afternoon Session.

The convention met at two o'clock and was called to order by the president.

Committee of the Whole.

Mr. TOWLE. Mr. President I move we go into committee of the whole for the purpose of considering the legislative article.

The motion was agreed to.

So the convention went into committee of the whole, Mr. Scofield in the chair.

Mr. GRAY. Mr. Chairman. I have a section which I wish to offer, to be numbered section four.

The secretary read the section, as follows:

"Every county having three-fifths of the number of inhabitants allowed for a senator, shall be entitled to one senator. Counties having one or more senators shall be allowed one senator for an excess of three-fifths of the number of inhabitants allowed for a senator. A county having the number of inhabitants allowed for a senator or three-fifths of that number shall be a senatorial district. Two or more counties not having three-fifths of such number shall be included in senatorial districts and be allowed one senator for each of such districts, such districts to be composed of contiguous counties and as near as practicable of an equal number of inhabitants."

Mr. GRAY. Mr. President. I move its adoption, and will explain briefly the course of the proposed section, so that every member will understand it. The rule proposed by this section is just the same as has already been provided for with reference to representatives. It seeks to accomplish the same end with reference to the senatorial apportionment, as has already been adopted with reference to representative apportionment. For instance, suppose the number of inhabitants for each senator in the state was 5,000, now supposing there is a county in the state with 3,000 inhabitants, that county would get one senator just the same as a county having 5,000. As to these counties having a large number, take a county in the state that has 8,000, that county will have two senators because it will get one for the 5,000 and one for the excess of three-fifths. In other words, to give every county a senator for 5,000 if that shall be the number fixed upon, and give every county one for the excess of three-fifths.

Mr. HASCALL. I am in favor of single senatorial districts; is this antagonistic to that proposition?

Mr. GRAY. I would say that this does not contemplate any division of counties, but provides that every county having one or more senators shall be a senatorial district. If you adopt that section as it is drawn, there is no power to create two districts out of one county. As to those counties that do not have three-fifths of the number of inhabitants, they are to be grouped together two or more into one district and are to be of contiguous territory, and as near as practicable of an equal number of inhabitants. The proposed section does not contemplate that any district shall be composed of several counties in a float.

Mr. TOWLE. Mr. President. It appears to me we have stretched this principle of representation of counties to its extreme length, and that it was for only the express purpose of getting these counties having a certain population, representation that we adopted this three-fifths rule. In other words we give them representation in the house of representatives, not in both houses. As far as respects the senate, I believe the whole number of people should be divided by the number of senators and that that quotient should send a senator to the upper house irrespective of county or county lines. If it is necessary to take a dozen counties to make a district, I am in favor of it, or in favor of taking half or a whole county. If we adopt the principle which the gentleman advocates I am afraid, Mr. Chairman, we will run out of senators, in other words run short of the number in attempting to apply the principle. For instance, we will say there are twenty-five senators to elect and we have fifteen counties entitled to send one senator, we have districts outside that have three-fifths of the number which entitles them to one member, under the rule you are held in an iron band and there is no getting out of it. In other words you find out you have only got twenty-five senators, while under the operations and arguments of this rule you will have forty. I can see where there is a dislocation, and it should not be adopted.

Mr. GRAY. Mr. President. It seems to me the chief objection urged by the gentleman, is the difficulty in making an apportionment in that way. It seems to me any man that has learned mental arithmetic can can take the census of the state, and it is not proposed to make an apportionment at any other time than just after the census, but upon the basis of the census. It seems to me it is usual enough to take the whole number of inhabitants in the state, take the number of the several counties and by a half hour's figuring to make out an apportionment of the state, to make it out so that there will be a certain fixed number of senators. It seems it is fixed at twenty-five. There cannot be any difficulty in making out an apportionment so as not to increase or diminish the number of senators. It may be it would not do to divide the whole number of inhabitants in the state by the number of senators and start in on that basis. It may be the quotient taken would not be the proper ratio to fix for one senator, though it would be very near it, because these excesses would about balance each other. It might vary one senator from it. It is easy to ascertain after you have tried that rule and find you have not got just the number of inhabitants to apportion the right number of senators; then take a less or greater number as the case may be, until you get it. It is not difficult to do this, and if the gentleman will reflect for a few moments he will see. I trust gentlemen of the committee will reflect, and consider candidly upon this. I have submitted it as the best thing my judgment would suggest. For my own part, I want to get rid of float districts. They have worked badly heretofore. They do not furnish proper representation. I want nothing to do with them. I find wherever my county has been connected with others in a float district. she has had no representation. She might just as well lose that excess. She gets no representation for it. The largest county in that float district invariably will have the power to get the senators. This is not just, or as it should be, and I trust the same rule will be applied to the senatorial apportionment that has been applied to representative apportionment.

Mr. TOWLE. We will suppose a case, although lawyers know upon a general rule there should be no imaginable cases in which it can work injustice. We will suppose our state contains 200,000 inhabitants, and that the number of senators is 35—that is 8,000 inhabitants to one senator. Suppose there are 50 counties in the state, and that one-half of those counties have a population of over 5,000, and the other half a population of three-fifths of the ratio, then you would find yourself in a predicament. In order to come up to that apportionment, it would require at least, thirty-seven and a half senators, in order to get around and fulfil the distribution. Gentlemen talk about algebra and other subjects of grammar. Why I can prove my theory by throwing a few figures together, and in a second show I am right. The idea is to give every county a senator, if possible. If we adopt this rule we will find ourselves in a predicament.

The committee divided and the section offered by Mr. Gray was adopted.

The chairman read the next section, as follows:

Sec. 5. The first house of representatives under this constitution shall consist of seventy-five members, who shall be chosen for one year. The first senate shall consist of twenty-five members, who shall be chosen for two years. After the first election, the number of senators and members of the house of representatives shall be regulated by law, but shall never exceed one hundred representatives and thirty-three senators.

Mr. HASCALL. I move to strike out the words "seventy-five" where they occur, and insert "fifty-seven," and strike out twenty-five" and insert "nineteen."

Mr. SPRAGUE. Mr. Chairman. I move to amend the amendment by striking out the words "seventy-five" and insert the words "sixty-three," and strike out the words "twenty-five," and insert "twenty-one."

Mr. WEAVER. I call for a division of the question. I want them put separate.

Mr. SPRAGUE. Mr. Chairman. I will withdraw my amendment.

The CHARIMAN. Gentlemen. The question occurs on the motion of Mr. Hascall.

Mr. LAKE. Mr. Chairman. I had hoped someone else would have risen. I prefer not to take part in all the discussion. I am not willing to allow this amendment to be put without a word of protest. The whole object has been to give the new counties some representation, and we can only base our action this morning on the numbers as we have them here and if these numbers are to be reduced the whole object aimed at will be lost. I thought it was understood and agreed that these new counties should have their proper representation. They cannot have it if the numbers are to be cut down here. These numbers are not too large, and if that is really the view and sense of this committee, what I supposed it to be, to give representation to the new counties as well as the old ones, then, certainly, this committee will not make any amendment at all, but leave it as it is.

Mr. TOWLE. I think the legislative committee have represented the views of the majority of this convention. I hope the gentleman will not press his amendment.

Mr. SPEICE. Mr. Chairman. I don't see the object of the gentleman from Douglas (Mr. Hascall) in moving to reduce the number of the members of the senate and house of representatives. Now it is well known that the members of this convention, who come from the western part of the state feel under great obligations to him for the action—the disinterested action he took this morning in securing us our share of representation. Now if we reduce the number of members to fifty-seven and nineteen, it will make the ratio so high that the action of this morning will be of but little service to us, for it will be impossible for the border counties to be represented. Now, to say, in the morning that we shall be represented, and then in the afternoon to adopt a measure which limits representation to so small a number of counties, that we cannot be represented, seems a foolish waste of time.

Mr. HASCALL. Mr. Chairman. The question with regard to the number of the members of the senate and house of representatives did not arise this morning, and I don't know that in my action this morning I am bound on this question. By the proposition I have introduced, the increase of members in the house would be eighteen and six in the senate; that is quite a large increase. We granted the new counties all they asked. They even took less than we offered them. Now they are benefited by this increase in the house and senate as much as the older counties are. We also propose to take the census next year and if they have made an increase they get the benefit of that increase. We also take the census again in 1874. Now we give them justice and whatever number we may determine upon as the proper number of members of the house of representatives and senate. They must be satisfied with the number that falls to their portion of the state. Now there are several considerations that determine me in sustaining this proposition. The first is, if we make the senate to consist of twenty-five members and the house of representatives consist of seventy-five members we will have to build a new state house; we will not have a building that will contain all the members. There are only fifty-two members in this convention and I submit to the members whether there is any extra room, and we have more room now than there would be in the winter, for then two stoves would have to be placed in the room. Hence I say that it is impossible to call together more than fifty-seven members to the house; secondly, I am opposed to the increase of the number of representatives.

Mr. SPEICE. (To Mr. Hascall) Do you hold this convention responsible for the size of this building?

Mr. HASCALL. I do not, but it is the duty of this convention to take these facts into consideration, and consider whether the state is prepared to build a new house. We have got along very well up to this time with thirteen in the senate and thirty nine in the house, but this number is now manifestly too small. The great state of New York has only thirty-two senators. All these things must be taken into consideration and when we propose to increase the number of our representatives, we must provide for a building that will be suitable to accommodate the legislature that will meet here next winter.

Mr. NEWSOM. Mr. Chairman. Being a candidate for governor of this state, I am sorry that this matter comes up at this time, for I am opposed to giving these western counties more than they deserve. I think there is danger of overloading this boat. Some of you candidates for official positions had better go down than to overwhelm this constitution. Now in my opinion this arrangement for representatives provides much too large a number. The idea of giving to the western counties more than they are entitled to because they are small in population is, in my judgment, mere humbug; and if these gentlemen who live west will remember that their country is new, and that they must wait until their part of the state has become better settled before they can expect the advantages that belong to the older portions of the state I think they will not ask so much of us; because these new counties are sparcely settled is it just to say that they shall have the same representation as the older counties? I think that it is unjust. This thing of providing for members of the legislature merely to accommodate and gratify office seekers, is, in my opinion, the merest humbug in the world. It is my opinion that fifteen or twenty men would have made this constitution as well as the whole fifty-two. In what way does this large representation benefit the people? When if there are more men in this convention than is necessary why does not the same principle apply to the legislature? In my opinion a few men do the work. There are at least ten men who are members of this body who do not even know what is going on. I see men all around me reading papers. There are too many members here, and I believe, sir, it is the case in the legislature. Now, sir, the idea I am advocating is not a popular one, I know, but it seems to me that it is mere humbug to talk about giving these western counties such a large representation. Suppose gentlemen, you make the number of the members of the legislature a hundred, will not the same proportion—will not the same majorities, preponderate? I don't believe that Otoe county needs more than two representatives, and I don't think Douglas county needs any more. Don't make this representation any larger. I don't think the people want it done. Don't accumulate these state expenses.

The Gentleman from Douglas remarks, "shall we build a new capital? You cannot get seventy-five members into this house?" This adding to the legislature does no good, a few members always have to do the work. This thing of accumulating members here is objectionable, for as it has been said a less number could have gotten up a better constitution that we shall now. I am opposed to this multiplying numbers.

Mr. SPRAGUE. Mr. Chairman. I am not a candidate for governor, but in reference to this amendment I have a few words to offer. Now, sir, under a different state of affairs I would support this amendment, but sir, we have adopted a rule fixing the modus operandi, by which this thing will be fixed. This amendment takes away from that rule the advantage it gives to these new counties, therefore I am opposed to it.

Mr. LAKE. How will it work a disadvantage to the new counties?

Mr. SPRAGUE. As it is now they may have a larger representation, the effect of this is that they should have the same. If we take the population of the state and divide it by seventy-five it will take over 1600 of a population to entitle it to any representation and many of these new counties will have no representation at all——

Mr. GRIGGS. Mr. Chairman. I propose to give the figures. With fifty-seven members the full ratio would be 2,159. Three-fifths of that number would be 1,295. A county having this number of inhabitants would then be entitled to one representative. With seventy-five representatives it would take 1640 citizens to make a full ratio and a three-fifths ratio would be 984 citizens. That is by the population as shown by the last census which is 123,056.

Mr. Chairman, I am afraid we will be making this legislature too large if we make it seventy-five. In making this calculation, I find that only three counties would be cut out with fifty-seven members that would not be entitled to a member with seventy-five. I think that seventy-five is too many.

Mr. ABBOTT. Mr. Chairman. I represent one of those western counties. I don't know that the people want seventy five members, but whether they do or not I am not in favor of it. I do think that seventy-five and twenty-five is too large.

Mr. MAJORS. Mr. Chairman. Before we take any more aboard our vessel let us stop and see what we have got on board now. We may be held responsible by the people if we undertake to put too much on. Before this we had but one session in two years, now we propose to have annual sessions, which will greatly increase the expenses. Our judgements are convinced at once that we have not the space in this room for more than fifty-seven members. I do honestly believe that the different portions of the state will be as well represented with that number as with seventy-five.

Mr. GRIGGS. Mr. Chairman. I

will state that with fifty-seven members there will be only two counties cut out that would be let in with seventy-five; Cedar and Madison counties. There is another, Butler county which has 1,292, within three of the number for fifty-seven and I suppose the legislature would allow that county a representative. It only takes 311 more inhabitants and almost any of these counties will increase that much soon.

Mr. MAXWELL. Mr. President. I think there will be no trouble about seating 100 representatives in this hall. The old senate chamber in the Capitol at Omaha was not half the size of this room and yet thirty-nine gentlemen sat there. This hall can be arranged to accommodate seventy-five members, so that there is no excuse on that plea, because a hundred members can be accommodated in this hall. 145 members have sat in convention here and were not uncomfortable.

Mr. LAKE. I would sugest that you dispense with the desks altogether, and have rows of seats.

Mr. MAXWELL. We have got the desks paid for and propose to use them. The next objection is on account of expense. I have voted constantly to reduce the expense of this state government. I have voted to reduce salaries, and am ready today to vote down salaries of several of these officers, and the justices ot the supreme court. We ask to reduce these expenses so as, if possible, to confine them to the very lowest possible limit. But Mr. President, here in new counties that are settling up we find last year 600, 800 or perhaps 1,000 inhabitants; now these people ask for representation. It is true my friend from Otoe (Mr. Newsom) being of a generous nature states he will give them the Otoe representation, that they will only claim one or two; I rather think he will insist on his full share, we all know counties desire to be represented and ought to be represented. Now this whole system of float districts ought to be discouraged as far as possible. We are in a float district, in connection with Douglas, Sarpy, Washington and some other counties, and the gentleman was elected from Douglas, he is a good man, but I believe he has never consulted a single member from Cass county——

Mr. LAKE. Has the gentleman from Cass ever consulted with the gentleman from Douglas who represents him, has he ever laid any matter before him?

Mr. MAXWELL. The gentleman is supposed to represent Cass county. I do not find any fault with him, but that is the result of these float districts. He was elected without any opposition from our county, that is the effect of this float system, that the stronger county takes the delegation. As to this increased expense, it is proposed to have fifty-seven members, perhaps seventy-five, what is the increased expense? It amounts to scarcely anything. Now as to the number of senators. It seems to me twenty-five will be a fair proportion and will allow many of these new counties to send a senator.

Mr. MANDERSON. Will you permit me. I was unfortunately absent from the hall and understand a part of your remarks had reference to me.

Mr. MAXWELL. I stated you were a member from the district composed of Cass, Douglas, Sarpy and other counties, and as far as I knew you were satisfactory to the people, but I believe you never consulted with the Cass county delegation as to any matter in regard to any districts or thing else.

Mr. MANDERSON. Has the gentleman ever consulted with his colleague the float member of the district?

Mr. MAXWELL. I do not know that is necessary.

Mr. MANDERSON. Perhaps I might view the matter in the same light. Permit me to say I did consult on a matter I thought was of local interest, with his colleagues Messrs. Kirkpatrick and Kenaston. It is said that an eagle does not mate with a carrion crow.

Mr. MAXWELL. I have only this to say, while we have no desire to find any fault with the gentleman, though he does assume such a supercilious air; that is the effect of these large float districts. While I do not propose to use lauguage which is disgraceful, I say I am very much disappointed in the gentleman from Douglas (Mr. Manderson.) I thought he was a gentleman, but find I was entirely mistaken. I say we want to discourage this whole system of float districts, and as far as possible, permit counties to elect their own senators and members of the house. Here by reducing the number of numbers you permit the small counties who have not a sufficient number, to form a representative district, in many cases not more than two counties would be required. In regard to senatorial districts, in many cases you form a district composed of three or more counties, this is very desirable in a new country. The gentleman says, one hundred members is entirely too large, a smaller number could dispatch the business much more rapidly. The object is not entirely to dispatch business rapidly, but to satisfy the people, and that can only be done by having the people represented. One man, or ten men could probably do the business of this convention more rapidly than the gentlemen here, but they come here as the representatives of the people, and ten men would insert some provisions not satisfactory to the people, consequently it is necessary for these fifty-two members to express an opinion on the propositions. My friend from Douglas would be in favor of several districts, but might be in favor of female suffrage, compulsory education, reformatory schools and other matters that would not be satisfactory to the people. As to the annual sessions, I do not understand it is necessary to have them. I understand we can have biennial sessions as well as now, I believe this house has not expressed any opinion on that point. Mr. Chairman, it is not the amount of representation these parties have, but the fact that they have representatives. Now if any county west of here has a representative on the floor it does not matter whether they have a great number or not so they have their interest. As to this cry about unnecessary expense of the legislature made by parties who have been anxious to increase the cost of state government, I think it comes in a very uncalled for manner. We are ready to reduce the expense, limiting the number of days to forty, and the pay to three dollars per day.

Mr. LAKE. Mr. Chairman. I have, thus far during the discussion of this question in respect to representation, kept silence. I was quite willing that it should be fixed up in a manner that would suit the people of the west, if it be possible to do so, without incurring too great a burden upon the people of the state. Now, as has been well said by the gentleman from Hall (Mr. Abbott,) I think they ought to be satisfied if justice is done them in respect to this matter; and if they are given representation in all those counties where they show themselves possessed of three-fifths of the ratio of representation, they ought to be well satisfied with any ratio that the majority of this convention shall think best to make. Then what do we find? We find in the report of this committee a proposition to increase the number of the house of representatives up to seventy-five, and I doubt whether there is a gentleman upon this floor but that in his conscience, must come to the conclusion that it would be a larger and more unwieldy body than ought to be provided for in this constitution, all things considered. When we look, Mr. Chairman, upon the conveniences the state has prepared for this legislature, and we cannot ignore this fact—what do we find? We have a hall for the representatives, which affords meager accommodations for fifty-two members, with the corps of reporters of the press, and the attendants that are always provided for. I say the accommodations are meagre, and when gentlemen propose, in order to accommodate themselves to so large a body to submit to unnecessary inconveniences; an inconvenience which will actually necessitate the erection of a new capitol building, I do not believe that the people of the state will tolerate it. As was well said by the gentleman from Otoe, this hall is large enough for any house of representatives that ought to be provided for many years to come. When we look at any other state of the Union, larger in population, in wealth, in all kinds and varieties of interests, agricultural, commercial, and otherwise, no such representation as is proposed here can be found. We look at the state of New York. We find no such mammoth representation compared to their numbers as is found here. In no other state of the union with one or two exceptions is so large a representation provided for. Gentlemen ask whether this convention is responsible for the size of the hall. Mr. Chairman, we take the hall as provided by the state, nor did people send us here to find fault with it, or to provide a new one. They sent us here to provide a constitution that should be adequate to the wants of the people. They did not send us here to go into any extravagance whatever; and as a representative of one portion of the state directly, and indirectly of the entire state, I say that in my opinion the people do not want any such representation as is provided for in this report; if we increase the senate up to nineteen and the house to fifty-seven members we shall make a body that will be sufficiently unwieldy, and which in its expenditures, will bear sufficiently heavy upon the shoulders of the people. Now, sir, while I, coming from one of the most populous counties of the state am willing to let the western gentlemen fix the fraction that shall entitle them to representation, I am not willing to sit still and permit a representation to be provided that shall be so unwieldy, and expensive as the one proposed. I am willing you should fix your fraction, but when you have done that I ask that you be content with a reasonable representation. In any event, the majority, the relative strength of the east and west, if you see fit to resort to those terms, will be the same. The proportionate strength of the east over the west, if you see fit to divide the state by any such designation will remain the same, by any system you can adopt, while the west would have a greater proportion than a fair division would entitle her to. The comparative strength of the two sections will be the same, whether the ratio of representation be a large number or a small one. And, Mr. Chairman, I do not think the western counties have, in times past or more recently, any great cause of complaint, in respect to what has been done for them, or as affecting their interests in the legislature. For, I am certain that the legislature is generally willing, so far as my experience has gone, to accord to them all those just measures which are adequate and necessary for their prosperity. I am sure sir, that no man can be found in this body, nor in any legislative body that could be called together in this state, that would deny to any portion of the state, any measure that would be calculated to advance their material prosperity? Why, sir, are we not all interested in the prosperity of every portion of the state? The gentleman from Otoe, Nemaha and Douglas counties, are all interested, just as much in the prosperity of the west—of Hall and Butler, of Cedar or of L'eau-qui-Court, as the representatives of those districts themselves possibly can be. It is true it may be necessary and proper that there should be someone to show to the legislature what those wants are; but when that is done, whether that person represent one county or two, is not the request if reasonable always granted? Who is there to deprive them of their rights. When those rights are made known? No one, Mr. Chairman. And it has been shown by the gentleman from Gage, who has taken the pains to apply his arithmetic to this question, that in this reduction of representation which will save to the state thousands, tens of thousands of dollars, only two counties will be deprived of a representation, which, by the report of the committee would be entitled to a separate representation upon the floor of the house of representatives. Now, sir, is there any necessity for this great increase— for us to provide for a legislative body which shall, according to the calculation and arrangement of the gentleman from Cass, be compelled to sit in a circular row of plain benches, and without desks, without reporters, without pages, without any officers or attendants that are usually found in legislative bodies—

Mr. MAXWELL. Did I make any such statement?

Mr. LAKE. Is it necessary that our desks, which have been provided for, should be cut down, as he proposes, in order to let in the increased representation? Why, sir, we should provide a constitution suitable to the wants of the people. We should provide a legislative body also suitable to their wants and to the building which the state has prepared, and which shall not demand an immediate outlay of hundreds of thousands of dollars for the construction of accommodations for this mammoth assembly, that it is proposed to foist upon the people. Sir, I am willing, as the gentleman from Otoe said he was willing to give to those western counties that shall have three-fifths of the ratio of representation, a representative in the legislature, even if we shall take a representative or two from us.

Mr. MYERS. Not I.

Mr. LAKE. I, for one, will submit to it, rather than thrust upon the people an overgrown system which shall be so expensive as is this one proposed by the committee. I believe, Mr. Chairman, that the interests of Douglas county would be just as safe; the interests of Otoe county would be just as safe in a decreased representation as in an increased one. And, sir, I believe that whenever a country is fairly and reasonably represented, if it has a number proportionate to the rest, it is all that is needed. And if all shall be cut down alike, then they stand in respect to each other, in the same proportionate strength as with the increased representation; one county is given no advantage over the other. If Douglas county is cut down one or two; Otoe county in the same ratio, and Richardson and Nemaha the same; each is affected alike and when each people are represented according to numbers, then no injustice is done. And I tell you, Mr. Chairman, we need but our experience in this convention, to convince any reflecting mind that the work of a legislature, the work of a convention, can be better done, quicker done, can be done if I may be permitted the expression—more acceptably to the people if the body be only of moderate size. I believe, sir, as the result of this convention, we shall send forth to the people, if we go on as we have been going for the past few days, a constitution which will prove the absurdity of these mammoth bodies.

When we first started out upon the business of making a constitution, I thought we were going to get along smoothly and that we would make one that would be acceptable to the people; one that would not bear upon their shoulders too heavily; but, Mr. Chairman, I fear the result of our present mode of proceeding. I don't wish to speak in a manner that I shall be understood as finding fault with any body or any man but I do think that the course which has been pursued here for the past few days has done much damage. I believe there is being engendered throughout this state, in consequence of what we are doing—in consequence of the extravagant provisions which we are incorporating in the constitution—I say there is being a feeling engendered which may work its defeat. We have, it is true, both political parties clamorous for a new constitution. But why are they clamorous? Will gentlemen please reflect upon the reasons why a constitutional convention was demanded by the people. What were they? The first, Mr. Chairman, was a general desire to have our judicial system reformed and reorganized. That, sir, was foremost in the catalogue. It was to provide for the creation of an independent supreme court, and perhaps the foundation of a new judicial district. Another reason was the question of extending county and municipal aid to railroad and other corporations. When you have mentioned these, you have named the principal reasons why a new constitution was required; but when assembled in pursuance of these demands of the people, and entered upon the labors which we were sent here by the people to perform, instead of confining ourselves to this duty, we have traveled outside, and are getting up a constitution which will require a much larger expenditure of money in order to carry out its provisions properly than is expended in many of the older states in the union. When we fixed the salary of the governor far above the medium of other state; when we fixed the salaries of the judges above the average, and provided for a legislative representation far above that of most of the other states; when we require an expenditure of $75,000 to $100,000 each year to carry on our new system of government—what shall we say when we have finished our labors here and returned to our homes—what shall we say in vindication of our course? Is there a gentleman upon this floor that can go before his constituents, and tell them why he voted to create five judicial districts in this state; can he give an answer which will satisfy his own conscience? Can he tell them why he fixed the salary of the supreme judges at $3,500 when they will be required to do but two months work in the year. Can he tell them why he foisted upon the people, a constitution that is to bring together seventy-five representatives and twenty-five senators ,at an expenditure of three to four hundred dollars per day. If he can explain these things satisfactorily, then he should go on and continue in the course that has been pursued for the last few days; but even then he should reflect, each and every one should reflect upon the work we are sent here to perform. We are not engaged in the duties of ordinary representatives in the state legislature. We should remember that we are making the fundamental law of the state—

that which shall last for years—a law that can not be changed as in case of enactments made by one legislature, merely to be modified or repealed by the next. We should act, rather as prudent, considerate statesmen, looking beyond the bounds of the particular locality which sends us here to discover and secure what will benefit the whole people. I know sir, for one that at times it is difficult to throw off this feeling of "locality." I have experienced that difficulty myself, and I know that others have experienced the same; but I conceive it to be my duty, as did the gentleman from Hall (Mr. Abbott) to strive to lay aside this feeling. He said that while he would like to secure to his own particular county a larger representation upon this floor than it now has, it will entail too large an expense upon the people of this state to increase the legislature to the extent which has been proposed, and therefore he does not feel justified in doing it.

Mr. HINMAN (To Mr. Lake) Will the enumeration proposed give a small county any advantage over the older, and larger counties?

Mr. LAKE. They have no advantage according to the first apportionment, but I am inclined to think that they will have the advantage in this. If the proposed provision giving to new counties. not now having a ratio of population, an independent representation whenever they shall acquire a population equal to three-fifths of the ratio agreed upon, be engrafted upon the constitution, those counties which may be organized hereafter, will have an undue advantage. If that provision is not engrafted upon the constitution they will all stand alike. But, Mr. Chairman, I believe and hope this section, as reported by the committee, will not be sustained. I would much prefer that the senate be reduced to 17, and the house of representatives to fifty-one. It would be more in accordance with the wishes and interests of the people. I believe all the wants of the people; but the utmost limit I am willing to go is that contemplated by the proposed amendment—nineteen senators and fifty-seven representatives.

Mr. PRICE.. Mr. Chairman. I do not wish to detain the committee for any length of time, but inasmuch as I have the honor to represent the extreme southwestern corner of the state, I wish to notice the drift of the argument I have listened to attentively for the last hour and a half. I wish to notice what the gentleman from Otoe (Mr. Newsom) said. I wish to say to the gentleman that he was not asked to give to the western counties any advantage which is not enjoyed by the county of Otoe, or the county of Douglas. There was a motion made to give the western counties an advantage, but that was voted down by the western members. They are not asking for any undue advantage in the apportionment. While I think a large representation would be an advantage in the next legislature I am not prepared to say that seventy-five members in the house of representatives is not larger than is necessary, but if it is large I am in favor of having a large representation from the fact that I am satisfied that the people of the state of Nebraska will never complain of too much representation. I wish to state, Mr. Chairman, that I don't think it is necessary to give the west any advantage, we ask only a fair show. Give us a representation equal with that of other parts of the state, and we are satisfied. I believe that I shall not vote for seventy-five and twenty-five, but I shall vote for sixty-three and twenty-one. We are not fixing this for all time to come, but only for the next legislature.

Mr. KIRKPATRICK. Mr. Chairman. I claim the indulgence of the committee while I make a few remarks on this subject. I rise to notice some of the arguments offered against this proposition. I think, sir, we have been treated with a new line of argument. The gentleman from Douglas has told us we must frame our constitution in proportion to the size of a certain building we have in the state; that because we have a small room here we should elect a small legislature. Now, Mr. Chairman, when a young man started out after getting married, how does he do? Perhaps he is living out in one of those sod houses, or in a house with one room. He looks about him and says "what shall I do? I am not able to enlarge this house and as it is there is no more room than we need now, and I cannot have any children and increase my family?" What will he do, sir? Why, sir, he goes out and he does the duty imposed upon him by his Creator. (laughter)—he does his duty to posterity sir,— but sir, that is not a fair representation.

I understand, sir, that when Kansas started out under her constitution with seventy-five representatives and twenty-five senators it was with power given to the legislature to increase it to 100 representatives and thirty-three senators. I say if any department of this state should be larger it should be the legislative department. That is what we democrats want, because we believe we can trust important matters to our representatives.

Mr. ABBOTT. Mr. Chairman. I understand that the amendment to the amendment to make the number sixty-three and twenty-one was withdrawn. I will offer that amendment now.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Hall (Mr. Abbott).

The amendment was not agreed to.

The CHAIRMAN. The question is on the amendment striking out "seventy-five" and inserting "fifty-seven," and striking out "twenty-five" and inserting "nineteen."

The committee divided and the motion was agreed to.

Mr. KIRKPATRICK. I move to strike out the word "one" in second line and insert "two."

Mr. STRICKLAND. Mr. Chairman. It seems to me it would suit the interest of the people better to have annual sessions. I am decidedly in favor of making the term one year.

Mr. MYERS. Mr. Chairman. I believe the public expression of opinion has been given more decidedly in reference to annual sessions than upon any other subject. I am myself decidedly in favor of annual sessions, for the reason, that when representatives come here every year they will be in immediate connection with the business affairs of the state; they will have supervision over the state officers. It is an old maxim that "when the cat is away the mice will to play," and in no other state have the mice played with more impunity than in this state. I therefore desire the legislature should be here every year to supervise, inspect and control the state officers in such manner as will secure the public welfare.

Mr. MOORE. Mr. Chairman. A word fitly spoken is like "apples of gold set in pictures of silver." I think nothing has been more neatly said than was said by the gentleman from Douglas (Mr. Myers), the people are the masters. We send our servants here to do our work, and we want these men to come back and report to us yearly what they have done and what they propose to do. I think one year is sufficiently long.

Mr. WAKELEY. Mr. Chairman. I do not suppose anything I can say on this question can change the mind of any member of this committee. I do not agree with my colleague (Mr. Myers) that annual sessions are necessary, still I am very much inclined to think the people of this state desire annual sessions. A man will sometimes differ with the people, The people of Wisconsin tried three years to get an amendment before the people providing for biennial sessions. It was submitted, and I think about one-twentieth of the voters voted upon the subject. Milwaukee and Madison voted against it and by the indifference of the people to the subject it was lost. I propose to vote for inserting in this constitution a very stringent prohibition upon special legislatures, as they did in Illinois. I propose to prohibit legislatures from passing special laws; in other words, to cut off local legislation. If that is done, I do not think sessions of the legislature are required every year; and when we are advocating economy do not let us "save at the spigot and waste at the bunghole." An annual session of the legislature will cost this people a great deal of money. We fixed the number at seventy-six, and the contemplated pay of members is four dollars making $300 a day for the pay of members and allowing $100 a day for other expenses, you have $400 per day to run the legislature; sixty days will make it $24,000. I think I speak within bounds when I say every session will cost from $25,000 to $40,000, it will not be less than that. By prohibiting these annual sessions we can save a sum of money that is worth saving.

Mr. KIRKPATRICK. Mr. Chairman. I beg gentlemen to think seriously of this proposition. I have not offered it in jest nor to get myself on the record. It is the conviction of my mind after studying the question and after a deal of experience in legislative bodies. I think the people desire this provision. What is the work of an annual session? It has been passing acts to locate territorial roads, and an unlimited number of mill dam companies have been incorporated and also a great many paper towns where there was not a house. We want to provide against this special legislation in this constitution. It is a very bad system that changes the laws every year before they are understood by the people or the courts.

Mr. MASON. Mr. Chairman. I desire to say a few words in respect to this matter, because I regard it of vital importance to the constituency that I in part represent. I think that biennial sessions are better for the people of the state at large than annual sessions. I think with the gentleman who just addressed this committee, but a very small portion of the enactments which stand upon the statute books are general laws, the greater portion of them are special enactments. I trust before this convention closes its labors it will prohibit by constitutional provision any such enactments. And when we have general laws to meet these special emergencies that arise in new counties and in different localities over the state, what necessity sir, of annual sessions? I can conceive of none; besides, I believe it works more evil than good; and I do hope that the motion of the gentleman from Cass (Mr. Kirkpatrick) will prevail. I question whether, since we became a state, since we put the machinery of the state in motion, whether anything has been gained by the body politic by the respective called sessions that have been held but on the contrary, thereto, I think very much has been lost, as the history of the legislature of this state will show. And, besides, I think the people will be vastly better satisfied with biennial sessions. I have heard no demands for an annual session of the legislature from any quarter, and I trust the motion of the gentleman from Cass may not prevail.

Mr. MYERS. Mr. Chairman. A few words in addition to those I have already expressed on this subject and I shall have done with it so far as I am concerned. We have had a number of called sessions since the organization of the state—quite as many as regular biennial sessions. They were called for the consideration of particular subjects specified and defined in the proclamation of the executive concerning them. Just such propositions as suited the caprice and fancy of that officer sometimes, it is true, including a measure which he may have deemed essentially necessary. They were, however, principally of a special character, as an examination will show. Whether these called or extra sessions have done any practical good, I am not prepared to say. The hands of the legislative power were effectually manacled. Modes and bounds were prescribed by the call of the governor beyond which no one dared to go or had a right to go. A general clause permitting the legislature to enact laws such as might be deemed promotive to the public good, was not in any one instance inserted into any of these proclamations for extra sessions. Probably the governor had no power to state a permission so general or to clothe the legislature with power by which their best judgment could be exercised for the general benefit and good of the people without executive dictation and demarkation. Now, this would seem to be a strong and unanswerable argument for annual sessions of the legislature. The last extra session was a remarkable one, in many important particulars. Their work was chalked out by the governor, defined and stated in positive terms, and although questions arose, of magnitude and of overwhelming importance, touching the administration of our financial affairs, yet no helping hand could be stretched out to the sinking, perishing and plundered state. In the way stood a defiant executive, surrounded and supported by associate officers and companions in wrongdoing, who held them firmly and grimly to what was nominated in the bond. It is true the grip at the throat of the state was for a moment relaxed, but only for the purpose of making a stronger grip upon the coffers of the state. The legislature then was overawed by executive power, or overcome by something equally as potent, probably executive blandishments, which secured their approval to all that had been done, with or without authority of law. Had there been a new legislature, new men, new ideas fresh from the ranks of the people, I apprehend a new order of affairs would have taken place, that reforms would have been instituted, that the leeches fattening and rolling in luxury upon their ill-gotten gains would have been forced to loose their hold upon the vitals of the body politic. The inability or refusal of the legislature to perform its whole duty, when the executive released the rule, and allowed them to open the case, must ever remain a matter of profound and sorrowful regret. I refer to it and to them more in sorrow than in anger. I have tried to bring myself to the charitable belief that the majority of that legislature had at least tried to do its duty, but I attribute their failure to the fact that it was an old legislature, that it was limited and circumscribed in its actions by a cautious and deeply implicated executive power, nor the will if they had ever manifested any in earnest, to do so. Now representatives in these walls every year. Let them stand guard at the portals of the treasury. The legislature ought to appear here once a year at least to see how public affairs are administered by their state servants. And not only this, new enterprises are started by the genius, enterprise and capital of the live men of our state. These may need the friendly, kindly and considerate help of the legislature. It has been found to be so in all the states who have annual sessions, and in none more so than in this young giant of the great west. Let enlightened, honest and reliable men be elected to the legislature every year. We have them amongst us. They are found in every walk and pursuit of life—in every department of production and industry, gathered here from almost every state in the union and parts adjacent, including a large portion of civilized Europe. We are not poor in manly fiber—feel no want of material in all that constitutes the wealth and glory of prosperous communities. Now let us use this wealth of mind, of honesty, integrity and enterprise for the advancement of our state to the possession of true greatness and prosperity. To accomplish this I submit we ought to have annual sessions of the legislature. We have had them nominally—let us have them in earnest. If I thought it would in any manner operate to the contrary, or to the injury of the public interest, I would not for a moment support the proposition. Not for a moment. But I have faith in the people, confidence in the ability of every good citizen to represent in his own proper person the great principle that the people are fully able to govern the state. It is the state and not the people, that has become corrupt, only, now, for the time being, evils cannot last long in this country. Those who get up these evils and perpetuate wrong upon their fellowmen, under cover of official position, are overtaken swiftly and replaced by other and better men. In that consists our safety, and I hope this convention will offer every facility to enable the people to do this fully and effectually whenever the occasion for its use may arise. In such emergencies procrastination is the thief not only of time, but also of justice. Evils become, by impunity so fastened upon the body politic as to render removal a work of difficulty, of labor and of pertinacious perseverence. Let us lop off the corruptionist as soon as we catch him. Let us catch him early and lay strong hands upon him, the arm of the law; let us seize him whenever we find him and in whatever position he may have intrenched himself. He must be stripped of his tarnished honors. That is admonitory to the future and corrective of the past. We owe this duty to succeeding generations. If we fail to do it, history will not fail to compliment us for our want of moral courage and failure to discharge our duty as American citizens.

But why pursue this unpleasant subject? It is only referred to as an argument in favor of annual sessions of the legislature.

The last legislature has been referred to in this discussion, sometimes in terms of censure, oftener in words of praise. I do not know that this is the time to pass impartial and fair judgment upon the work accomplished by the last legislature, the session of 1870. I must say, however, for one, that I am highly pleased with the work that has been done. In the justice of enactments it will compare favorably with that of any other similar body of men in this union. It has come up to the standard of the times. It has met the enemy boldly and fearlessly and come through the fearful fray more than victorious. It has bearded the lion in his den and scattered his cubs to the four winds of heaven and taught a lesson to them which they can never forget and which will have a salutary effect upon all such for all time to come. This is the progressive movement to have the people at the capital every year to remodel their laws, to enact new measures as well as to remove old laws that may be inoperative, injurious and imperfect. This ought to be done promptly, and when finished let them go home and submit their action to the unbiased judgment of the people, their constituents. No harm can result from this, but on the contrary much good will be the result. This is the highest duty and the mission of free government.

Some one has said that I am a stand-still man—that I am opposed to progress. I am sir, opposed to progress in the wrong direction. I am too old, I trust, as has been insinuated, to lend support to ill-digested legislation, and unwarranted departures from well-tried, substantial laws around which cluster the experience, the knowledge and virtue of time and trial. To them I adhere, come opposition from whence it may. I will neither be coaxed or driven from the path of duty. I think that fact ought to be understood and well understood by this time. It was progress that brought me here. I have not yet reached the end of it and do not desire to, until raised by a higher power to another sphere of usefulness where reproach for duties performed will never be heard. But let me hope we will have annual sessions in this state. Some talk of special legislation as an evil. So it is when used by selfish men. But let me ask, what constitutes special legislation? The creation of monopolies to override the interests and rights of the people, although they may be created by general laws. General laws on this and kindred subjects have done more harm in this and other subjects than any law ever passed in a special law. We must have in certain well understood cases, special laws for special subjects. Would you convert your courts into petty legislatures for the doing of the work that legitimately belongs to the representatives of the people? There are few special laws on our statute books that I would be willing to repeal, and if repealed very great injury to our varied interests would result. General laws are the rule, special laws the exception; were there no exceptions necessary in their scope and nature, there would be no necessity for the rule. We must unloose the bonds that may fetter trade, manufactures, agriculture, or aid them, often time by indispensable special laws. There are really few general laws in operation. Your constitution contains them, and is your legislature more perfect than your organic law? This state became a state by a special law. I do not believe, Mr. Chairman, there is a special law upon your books here that has worked injuriously to the whole people. If there is, I have failed to see it. There may be exceptions. But the general scope and tenor of these laws is to untie the hands of the people. For this purpose is the legislature convened at any time. It is true there ought to be general laws upon general subjects. I agree to the principle as applied to such subjects. When you go further, you establish a tyranny of restrictions, and when we become hide-bound, selfish, bound hand and foot by the fetters of want of power to perform an especial duty, we fall short of enjoying that freedom which has ever been our happiness and boast. Therefore it is that I am in favor of such legislation as of right belongs to the law-making power of a free state.

Mr. GRIGGS. I am in favor of the section as submitted by the committee. I, too, believe annual sessions are necessary. I believe it has been the experience in this state that although we have had a biennial session every year for four years, the legislature has been called together by the governor to make certain laws which, if we had had an annual session the legislature could have transacted. If there is not a great deal to do the legislators can cease their work and go home. Several gentlemen have said they have heard none of their constituents say they were in favor of annual sessions. I have heard many of my constituents say that they were, because they do not believe it is right for the governor to call special sessions, and that he should say other subjects should be acted upon. I hope it will be left as it is. If anything is done let us cut down the number of days they are allowed pay, and thereby cut down the term of the legislature. We will save expense to the state. In this state, progressing as we are now, we need annual sessions. There are new things growing up that need the care of the legislature, and I hope it will remain as it is. As far as special legislation is concerned we will meet that subject when it comes up.

Mr. MASON. It is here, sir, that I see an opportunity to save the state on an average for two years at least $75,000, or from $60,000 to $75,000. And, sir, it is for that reason and that alone that I address myself to this proposition for a single moment; and were I to pause here and enter into discussion of these respective called sessions and their merits, it would lead me far, perhaps, from the line of my duty in urging upon the committee the considerations that now urge me to speak on this question. I do not believe, sir, that a legislative body, moved on by congressional power, can make a constitution for a foreign state, and change without the consent of the people of a state this constitution which they have elected to adopt. I know, sir, it has been said that it has been done. But the constitution-making power is that power wherein resides the elective franchise; and to talk about a legislature that is the creature of the constitution, that have no power excepting such as they acquire under and by virtue of it, moved to act by a congressional power changing the constitution, is an innovation upon the liberties of the people ,that I, for one, repudiate. Then, sir, were I to review that session at which this was done I should say that all that was there written stands as a nullity. I would say, as a distinguished member of the senate said, that "it was so much waste paper." But the people paid the bill. And I might follow on session after session until I had arrived at the same result. Now, sir, can any man suppose an emergency, unless it be war, or invasion or internal dissensions, where the people require their representatives called together to make general laws for them every year? I said there should be a meeting of the legislature under this constitution, if it should be adopted, on the first of January next year; and when they shall have interwoven this constitution with our present laws, will any gentleman stand here and show any good reason why, the following year, there should be a burden of taxation laid upon the people not less than $75,000, unless it be to make a mill dam, or grant a charter or to grind somebody's individual ax, in which the people have no special interest? Now, sir, I think I understand, perhaps, the sentiment of the constituency, I in part, represent, when I say that there should be only such meetings of the legislature as shall make the changes in the laws which are found necessary in their practical working, and should enact such new laws as may promote their interests. And I believe, sir,—why, how many states in this union are there that have annual sessions in the legislature. Can the gentleman tell me? There are vastly more that have sessions once in three years than every year, and every state is changing its sessions to biennial sessions. Where some of them are the commercial centers of the world; and with our system of laws, our constitution once put in working order, it will seem to me there can be no earthly reason urged to justify an annual session of the legislature, and, as has been said by my friend from Douglas (Mr. Justice Lake) somebody will enquire—somebody will enquire, "Why do you have annual sessions of the legislature?" Somebody may answer, "To make great men out of small politicians." The people will answer, "We have no special interest in that. We only have an interest in the enactment of such general and uniformly useful laws as shall carry on the advancement of the whole political fabric."

The gentlemen have been talking very long and very loud upon this question of expense. Take the expense of a single session of the legislature. Look at the one item of a printers bill which has been sent in here since our sessions commenced, and then take the mileage of the members into consideration, the pay of the members and all, and not much less than sixty or seventy-five thousand dollars will be expended at every session of the legislature.

Now, sir, have we heard one single reason why there should be an annual session of the legislature? There is but one—that the hotel-keepers and the people of Lincoln may be made happy by the expenditure of the money belonging to the state. It is not because the people of this state demand, or require it, but because the spending of large sums of money in any town, helps the people of that town. I hoped that no one in the committee or in the convention would oppose biennial sessions of the legislature. I also think that a legislature which adopts a constitutional amendment should come fresh from the people. I think no fundamental law can be made by any power on earth except by the people who are to be governed by that fundamental law. Sir, what legislation with respect to your school system,—what in respect to your general laws, is required, that a session of the legislature need be held every year? Then, sir, if there be none, these sessions are to be held, as I said before, because some man wants to be in the legislature, and the people of Lincoln want the money you will spend here. The printers all want an annual session. There is not a single newspaper in the state but what wants work, but I assure you sir, the people do not want this extra and useless expenditure of money. To use the language of the gentleman from Douglas (Mr. Estabrook) "it is a very long clothes line, for a very small wash." I hope we will not call for an annual session of the Legislature.

Mr. MYERS. Mr. Chairman. The experience of the past has demonstrated beyond doubt, the necessity of having the people meet here frequently, through their representatives to look after their interests. The history of the other countries, and that of our own, has demonstrated this fact. When our dearest interests were about to be invaded and trampled upon, during the late war, the congress of the United States remained in session all the time. The English parliament sat for thirty years, at one period of that nation's history, in order to maintain the rights of the people; and, sir, with these illustrious examples it is the part of wisdom to be governed by them. The legislature of Ohio, Indiana, Pennsylvania, and all that great belt of states where the great interests of our country most do congregate, meets annually to attend the wants of the people. I am satisfied that this proposition would meet with the approval of the majority of the people of this state.

Mr. GRIGGS. Mr. Chairman. I only wish to notice the matter of the expense of this anuual legislature. The gentleman from Otoe (Mr. Mason) says it will be about $75,000 for each session. I would say, sir, that this is simply bosh. This convention of fifty-two members has been here in session for about two months, and we have not yet expended $15,000, employing reporters too at the rate of $30 per day during that time. It is not possible that we should expend more than $25,000 at any session.

Mr. MAXWELL. Mr. Chairman. I, too, am in favor of bi-ennial sessions being provided for here. We can amend the constitution any time after proper notice. Now we must consider, when the gentleman states that not more than fifteen or twenty thousand dollars will be expended, he must remember that the journal and general laws must be published. The general laws ought not to be changed in a less time than two years. It brings about an uncertainty as to what our general laws are. There is much of the time at the sessions of our legislature that but little work is being done. The first part of the session is always taken up with appointing committees, getting matters arranged for going to work, etc. There is always more done in the last twenty days of the session than in all the other time. I hope these biennial sessions will be held. The matter of expense should be considered. It is true we are rich in all the attributes that go to make up wealth, but we are in the same condition as a man who owns a large tract of unimproved land. He owns valuable property, but it is not available. Now what would we think of that man if he should go to work and erect a very costly house, live in fine style, and not improve his land? We would say he was a very unwise man. It does seem to me it is best not to tax our people too heavily, and that we should provide for biennial sessions of our legislature.

Mr. ESTABROOK. Mr. Chairman. In the midst of a severe headache. I did not intend to say anything; but it would be a matter of sincere regret to me if this convention should say we shall have only biennial sessions of the legislature. If there was any one thing that moved the people to require this convention it was that we might have an annual session provided for. I would rather hear the gentleman when they object to annual sessions put it on any other ground than expenses.

It would seem to me that there are men on this floor so wise that they would do all the legislative work for years to come.

When the gentleman from Cass tells me that if it don't work well we can change it. I tell him that by that time we will have reason to change back into biennial sessions. It is urged that in older states they have biennial sessions. Well I can see the reason for that. In the old states everything is perfected there, in a measure the old ways are plain so that there is scarcely a necessity for any legislation.

Now, sir, we are taking something of a step into the dark, we are beginning anew, and we find we have very important interests to provide for, things will have to undergo a radical change. We find we have in the school land alone a monied interest of millions of dollars which will have to be taken care of, and many new matters for legislation will come up under this new constitution. Now, sir, if seventy-five men are too many, rather than have less than annual sessions now on account of the expense, say cut the number down to half that many. I believe that the legislative assembly which sat here last spring made it their absolute duty that they should do a great deal more than just attend to the impeachment matter and hence they passed several laws, but you say they were not important. The people say they were important. With all these ten thousand kinds of interests that we are creating, how is it that we can do now without frequent legislative enactments? In my humble opinion the assembly of this body will be a necessity for each year. Now, sir, as regards whether Nebraska is a state or not? It comes with peculiar force from the chief justice to declare excathedra, from his high position that we are not a state. Let me ask how was it that the state of Michigan got into the union? It was not by the solemn declaration and sanction of the legislature, but by a voluntary convention of the people. I undertake to say that congress may say to any territory it pleases, "you are a state, and you can't help it." I would like to know, sir, what you would do if congress should say, "Be thou a state?" How would you help yourself? I don't like to have it come excathedra straight from the supreme court of the state that we are not a state. I will enter my protest against it any way.

Mr. MASON. Mr. Chairman. It is unfortunate some times that gentlemen will put words in their opponent's mouths when they utterly fail in argument. Now, sir, what did I say? Not that we were not a state, and not that the adopted constitution of the people was not a constitution, but I did say that a legislature created under the constitution could not change or amend it. I concede, lest the gentleman should conceive he was in a territory, that Nebraska is admitted as a state, that the old constitution, excepting as is changed by fourteenth and fifteenth amendments is the sovereign law of this state, and that the action of the legislature in attempting to change it at congressional dictation is an absolute nullity in my opinion. That is all I said. It may be a project, but I usually have reasons for my projects. I will argue that question elsewhere. I do not but it would be well to discuss the main question. I simply have to say the experience of the past has illustrated no good results from the annual sessions of the legislature. It is unnecessary to have a session every year. I will say, however, I would not object, while we are putting this machinery into operation, I would not object to an annual session for two or three years, and then let us have biennial sessions thereafter. There may be force in the gentleman's argument that in the change that is taking place, there ought to be an annual session for the first two or three years. I desire, when this vote shall have been taken to submit an amendment to have sessions the first of January, 1873, and if gentlemen insist upon it the first of January 1874, and biennial thereafter. I would not seriously object to that, but I do protest against incorporating in the constitution this enormous expense. While sitting here I have made the figures for a single session. The pay of members at four dollars per day for forty days $12,480; I estimate the mileage at $2,000 making $14,480; incidental printing I put at $4,000; printing of laws and journals $6,000; incidental expenses, lights, fuel, etc., $6 000, making $30,480 for your 40 days session, a session in other states would be eighty days, hence my figures at $60,000 was not far from correct, and not an overdrawn picture, it is within the knowledge of every gentleman that public expenses never fall below an estimate but always overrun it. I will try and prepare an amendment to reach the case I have spoken of, I prefer that for my own part, because there may be changes necessary to be made.

Mr. HASCALL. Mr. Chairman. I am in favor of this section as it stands, because I believe it will be a saving of expense to the state. The gentleman makes his figures different to mine, I think it is a matter of mathematical calculation. I make the per diem of 76 members which we have adopted, $12,160, the mileage average fifteen dollars per member would be $1,140, incidental printing expenses $6,000, printing laws and journals $5,000 that makes $24,300. I claim that is the outside figure you can put upon the expenses of the legislature and it is very likely to fall below that sum. Here is a late Massachusetts paper which states "the Massachusetts legislature adjourned on Saturday after a session of 126 working days." I think it is absolutely necessary in order to transact business that will necessarily arise in this state for the action of the legislature, that they should have forty working days every year, and unless we have annual sessions, and they are allowed forty days, I am inclined to think there will be something left undone, and that the interests of the state must necessarily suffer. I do not think these questions the gentleman has attempted to raise and thrust in here as objections to these annual sessions, are well taken. I think they are advanced more for the purpose of prejudicing minds against the proposition, than they are to reach the true merits of the case. It would be almost impossible to consider a revision of the statutes if we should propose to have a revision of our session laws; it would be impossible to consider that subject alone and do it properly in less than forty days. That is only one subject matter that will necessarily arise. If the business can be done in twenty days instead of forty then there is that much saving to the people of the state. Legislators are not going to remain in session after they have accomplished the work for which they assembled, merely to rob the people of the per diem they might get. I have more faith in the representatives of the people than that, neither do I believe the proposition the gentleman threw out about this being a provision to make great men of one horse politicians. I find more great men made out of one horse politicians in other ways than I ever found were created in this manner. I think this proposition should stand upon its merits, and thinking we who have thoroughly considered this from the standpoint of business or necessity have come to the conclusion that it is necessary to have at least forty days session of the legislature annually, and I shall therefore vote for annual sessions. The gentleman backed down wonderfully from his first proposition. He set out it would cost $75,000 every year, he comes down to $30,000 and I have $24,000 which I claim to be the outside figures. If the gentleman can make so great a fall as from $75,000 to $30,000, I think he will come down several pins yet.

Mr. MASON. I desire to offer an amendment in lieu of section six:

"That the legislature shall meet on the first Tuesday in January each year until 1873, after that every two years."

Mr. BOYD. Mr. Chairman. I move an amendment. Add after the word "year" in second line of section five the words "until the year 1873. After that year the members of the house of representatives shall be chosen for two years.

Mr. MASON. I accept the amendment.

Mr. GRIGGS. I think this amendment is virtually begging the question. They started out in the first place with a proposition that biennial sessions were all that is necessary. Now they have thrown up the sponge as far as that is concerned, and now they say we need them every three years and that we shall not need them after that time. It may perhaps be after that time. There may be such an exigency, and we shall need annual sessions more than before. I deny that any man, looking into the future, can say whether we will require annual or biennial sessions within three years of this time. I say let the future attend to that, and when it is found annual sessions are not necessary then change the constitution.

Mr. THOMAS. I do not think if we proceed to act under our present constitution we would find annual sessions were necessary after a few years had elapsed. It is true, under a new constitution, it is necessary the legislature should be frequently convening. If the people of the state should adopt the constitution we are now preparing it is true the legislature should meet probably every two or three years. It will be necessary that new statutes be prepared and law provided so as to take care of certain lands and other property of the state. But is it true that after these few years have elapsed there will be a necessity for annual sessions? In Ohio, Iowa, Missouri, Illinois, Michigan, and many other states near us, they have adopted the biennial sessions. Now, is it necessary we should have anything different from them. It seems to me all the business can be done; and if it is true the business of the state can be accomplished by biennial sessions, we should certainly save a large amount to the state. Say an ordinary session would cost $30,000 or $40,000, that amount may be actually saved. Now, what has been the cause of long sessions of the legislature up to this time. The curse of legislatures in this state has been special legislation which has been carried through. Every person who has been a member of the legislature of this state, must be aware of the amount of time which has been taken up by passing special acts—acts for the benefiting of particular individuals or localities. Here last winter, although many members continually opposed special legislation, our statute books will show many acts were passed in which the people of the state were not interested. Acts changing the name of a man at one time, and rechanging it at another time; acts changing the name of streets, and alleys in towns and villages. It is such legislation as that which has taken up the time of the legislature and consumed the money of the people. And all that can be saved and will be saved, if we put in our constitution such a provision as they had in the Illinois constitution; and also in the constitution of many states, by which all of such legislation as this is prohibited. Such matters as changing names can be attended to by the courts and be there confined entirely. Such matters as changing names of streets, vacation of streets and alleys can easily be left to the county commissioners. I think if we make a deduction of all this time unnecessarily consumed we will actually save to the people a large amount of money. Can any gentleman say it is necessary we should have sessions of the legislature every year? I have not heard any gentleman, in the argument, show or try to show how it can be necessary. If we should provide that we shall have annual sessions for a few years, I think three years would be abundantly sufficient to put the machinery of the state in operation and provide for the taking care of all this property. We can have a statute made to conform with the constitution, and, if necessary, we may appoint commissioners to prepare a code of laws which shall conform to the constitution. When this is done, where is the necessity for annual sessions. I am in favor of the amendment to the amendment which has been proposed. It seems to me this is eminently proper, and will meet with the satisfaction of the people of the state.

Mr. GRIGGS. Mr. Chairman. I wish to quote from the honorable gentleman from Otoe (Judge Mason), in a speech wherein he answered the gentleman from Lincoln. He said: "When gentlemen stand up here to speak for posterity, I stand here to say that posterity will be just as able to speak for itself as the gentleman to speak for it." And I believe that if the future people, who live in this state three or four years from this time, wish to change the constitution they will do so; and if they desire biennial sessions they will have them. I think posterity will be just as able to speak for itself as we. In reference to the argument of the gentleman from Nemaha (Mr. Thomas) I agree with him in regard to special legislation. I am satisfied it is a curse to our legislature. I think the money will amount to far less than $24,000 if we say the legislature shall not make any special act. And I think that the argument of the gentleman from Nemaha (Mr. Majors) does not meet the question. It is whether we need an annual session of the legislature. We should prohibit special legislation and then the term of the legislature will not be taken up in this way. Their work will go on and they will go home. If we wish to change this constitution, we can do so. Do not let us say that the annual sessions of the legislature shall cease for we don't know when we may want that body convened.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Douglas (Mr. Boyd) which reads: "After the word 'year' in the second line insert 'until the year 1873.' After that year the member of the house of representatives shall be chosen for two years."

The committee divided and the amendment was agreed to.

The section as amended was adopted.

The chairman read the next section, as follows:

Sec. 13. "The members of the legislature shall receive for their services at the first session after the adoption of this constitution a sum not exceeding four dollars per day from the commencement of the session; but such sum shall not exceed in the aggregate four hundred dollars for per diem allowance, except in proceedings of impeachment. They shall also receive one dolar for every ten miles they shall travel in going to and returning from the state capital, on the most usual route. The speaker of the house of representatives shal, in virtue of his office, receive an additional compensation equal to one-third of his per diem allowance respectively."

Mr. KIRKPATRICK. Mr. Chairman. I desire to offer a substitute for the section. It is too cumbersom and has too many words in it. I will read my substitute. "Members of the legislature shall receive for their services, three dollars per day, and mileage at the rate of ten cents per mile in going to and returning from the state capital. The speaker of the house of representatives shall receive twice the per diem of members."

I have two reasons, Mr. Chairman, for offering this substitute. One reason is, it is much shorter. It also makes a little change in the reading of the section. This section reads:

"The members of the legislature shall receive for their services, at the first session after the adoption of this constitution, a sum not exceeding four dollars per day from the commencement of the session, but such sum shall not exceed in the aggregate two hundred and forty dollars for per diem allowance, except in proceedings for impeachment."

It seems to me this is a kind of negative provision. It is, sir, an awkward way to limit the sessions. If it is the purpose to limit the sessions of the legislature, why not do it in a direct way. The old constitution is much better than this, in this regard. The section goes on to say: "They shall receive one dollar for every ten miles they shall travel in in going to and returning from the state capital on the most usual route."

Why not say, "ten cents per mile?" Then again it says: "the speaker of the house of representatives shall, in virtue of his office, receive an aditional compensation equal to one-third of his per diem allowance".

Now, sir, I doubt whether more words can be worked into this section. I would say that in most of the states—in all the western states at least the speaker of the house of representatives gets double pay.

The CHAIRMAN. The question is upon the adoption of the substitute.

Mr. MOORE. Mr. Chairman. I move to amend by striking out the extra allowance for the speaker.

Mr. KIRKPATRICK. I don't know that I would object to that. In the days of our first legislature, we served for $3.00 per day and did not lose anything. I always saved something. One session, I remember, I saved seventy-five cents.

The CHAIRMAN. The question is upon the motion to amend by striking out the extra allowance for the speaker.

Mr. STRICKLAND. Mr. Chairman. I hope this amendment will not prevail. It is the custom all over the United States to pay the speaker this allowance. I hope the dignity of the state will be sustained. I remember one time I served as speaker in the house of representatives twenty three days. I was not the regular speaker and I did not draw the extra allowance. It was one of the perquisites of the office and I was willing the speaker should have it.

Mr. WAKELEY: Mr. Chairman. I hope the amendment will not be adopted. I believe it is customary for speakers of the house of representatives to invite members to oyster suppers, etc. (Laughter.)

Mr. KIRKPATRICK. Mr Chairman. I know it is much more laborious to sit in that chair and keep track of the proceedings of this body than it is to sit as a member. I have had some experience myself, sir, in that kind of business. I would rather sit here at $3.00 per day than to sit there for six.

Mr. BALLARD. Mr. Chairman. My humble friend from Douglas (Mr. Strickland) says we ought to sustain the "dignity of the state." If it is important to keep up the "dignity of the state," let the speaker serve for dignity. So far as the habit and custom of other states is concerned—how does that apply here when we are talking about economy? My friend from Cass (Mr. Kirkpatrick) says it is a laborious position. I ask if there is no honor connected with it? I say sir, if you would provide that the speaker did not get a cent, there would be plenty to take the office.

Mr. MASON. Mr. Chairman. I hope the amendment will not prevail for I agree with my friend from Cass (Mr. Kirkpatrick) it is a very laborious task to control and preside over a body of this character. I would rather sit upon this floor as a member than to occupy the position at double pay.

Mr. MOORE. Mr. Chairman. I do not see that it is such a laborious task to sit in that chair. I know that the honorable speaker of this convention is only receiving $3.00 per day. He seems to do the duties of the office very well.

Mr. STRICKLAND. I would inform the gentleman from York (Mr. Moore) that the legislature provided that the president of this convention should get double pay, and am drawing six dollars per day, every day I live now (Laughter.))

Mr. MOORE. If the members of the legislature did their duty, I tell you they are working about as hard as the speaker of the house. I believe that when one member of the legislature receives a penny, they should all receive one, because the same length of time has been spent by all, and the work done by all is equally laborious, if the members do their duty.

The CHAIRMAN. The question is on striking out the extra allowance for the speaker.

The amendment was not agreed to.

Mr. GRIGGS. Mr. Chairman. I move to strike out the word "three" and insert "four" before the word "dollars," the per diem allowance of a member.

The committee divided and the amendment was agreed to.

Mr. STEVENSON. Mr. Chairman. I move to strike out the words "twice the per diem allowance of a member," and insert "and additional compensation equal to one-third his per diem allowance."

The amendment was not agreed to.

The question is on the adoption of the substitute of the gentleman from Cass (Mr. Kirkpatrick) as amended.

The committee divided and the substitute was adopted.

The chairman read the next section, as follows:

Sec. 6. The legislature shall meet in the capitol in the first Tuesday in January in every year, unless sooner convened by the governor.

Mr. MASON. Mr. Chairman. I have a substitute for that section as follows:

"The legislature shall meet at the Capitol on the first Tuesday in January in the years 1872 and 1873, and biennially thereafter, unless sooner convened by the governor."

Mr. HASCALL. Mr. Chairman. I propose to offer a substitute for this section (six) and the section following, and I will state why I do so. I am not offering a new section. I find that section nine of the legislative article of the Illinois constitution all that is in this and section seven which reads:

Sec. 7. Each house shall choose its own officers not otherwise provided for by the constitution. Each house shall judge of the qualifications of its members. Contested elections shall be determined by a committee, to be selected, formed and regulated in such manner as shall be directed by law. A majority of each house shall constitute a quorum to do business, but a less number may adjourn from day to day, and may be authorized by law to compel the attendance of absent members in such manner and under such penalties as may be provided.

Now this section in the Illinois constitution the part which I propose to offer as a substitute for section seven reads as follows:

"A majority of the members elected to each house shall constitute a quorum. Each house shall determine the rules of its proceedings, and be the judge of the election, returns and qualifications of its members; shall choose its own officers; and the senate shall choose a temporary president to preside when the lieutenant governor shall not attend as president or shall act as governor. The secretary of state shall call the house of representatives to order at the opening of each new assembly, and preside over it until a temporary presiding officer thereof shall have been chosen and shall have taken his seat. No member shall be expelled by either house, except by a vote of two-thirds of all the members elected to that house, and no member shall be twice expelled for the same offense. Each house may punish by imprisonment any person, not a member, who shall be guilty of disrespect to the house by disorderly or contemptuous behavior in its presence. But no such imprisonment shall extend beyond 24 hours at one time, unless the person shall persist in such disorderly or contemptuous behavior."

I think that is preferable to the section reported, section seven, and we can leave section six as it is.

Mr. HASCALL. You will see the Illinois constitution not only contains the provision I have read, but also a provision in regard to the time of the meeting of the legislature.

Mr. WAKELEY. Mr. Chairman This Illinois constitution provides that the legislature shall meet on the first Monday in January in the year next ensuing the election of members. That will apply as well where they are elected for two years as where they are elected for one, and we should provide if we elect them for two years that they shall meet in the first January after their election.

Mr. MASON. If you offer that I will withdraw the substitute.

Mr. WAKELEY. If my colleague (Mr. Hascall) will change the phraseology to suit the session of the legislature, and make it twelve o'clock noon on the first Tuesday in January.

Mr. HASCALL. I have no objection to its being fixed in that way.

Mr. MASON. I withdraw the substitute.

The CHAIRMAN.. The question is on the substitute.

The substitute was agreed to.

Mr. WEAVER. Mr. Chairman. I move that the committee rise, report progress and ask leave to sit again.

The motion was agreed to.

Mr. SCOFIELD. Mr. President. The committee of the whole have had under consideration the legislative article and report progress and ask leave to sit again.

Adjournment.

Mr. BALLARD. I move we adjourn.

The motion was agreed to.

So the convention at six o'clock and five minutes adjourned.

THIRTY-FOURTH DAY.

Thursday, August 3, 1871.

The convention met at 8 o'clock, and was called to order by the president.

Prayer.

Prayer was offered by the chaplain to the convention, Rev. L. B. Fifield, as follows:

Our Father may it please Thee to accept our thanks for Thy loving kindness. Continue unto us Thy forbearance. Bless the convention today, and bless us every one in our homes and our friends; Bless the interests of God as they are committed unto us, in any sort of way. Amen.

Reading of the Journal.

The journal of the last day's proceedings was read and approved.

Communications.

The secretary read a communication from the superintendent of the state board of immigration as follows:

Office Supt. of Immigration,
Omaha, Nebr., July 28, 1871.

S. A. Strickland,
Pres. Constitutional Conv.

Sir: In compliance with the request of the constitutional convention, and by your official direction, I will make a brief statement regarding the operations of the state board of immigration, as far as I am officially connected therewith: Premising the same with a clear definition of my position in relation to the board. You will please understand that I am in my capacity of state superintendent of Immigration, not a member of the board, but only an executive officer appointed by the state to carry out the commands and orders of the board. It would be improper for me to go into an examination of the acts of the board, either commending or condemning them, as I have no authority over them. I have always endeavored to carry out their orders as nearly as possible, and to so construe them as to work for the interests of the state.

The publications and circulars printed by the board with one exception have received a wide distribution at my hands, in different parts of this country and Europe, both by post and by the efforts of accredited agents of the board through other channels which have always been chosen with a view to economizing the appropriation made for the use of the board by the legislature.

These publications of the board have been printed in the English, German, Swedish, and Danish languages. A Bohemian edition is also ordered.

It would be impossible to give a detailed statement of what has been accomplished in the brief time which has elapsed since the machinery of the board has been put into operation. In fact the general results of such an effort on the part of the state to induce immigration to her lands can never be definitely put into figures. After the minds of emigrants are affected by the slightest influences, when again the strongest efforts prove fruitless. My general impression is, the action of the board and superintendent, although perhaps some times miscalculated, yet as a whole, that their efforts have been as successful as could be expected of a new organization hurriedly put in operation and after so short time has elapsed since it has been at work. Certainly in no period in the history of the state have so many actual settlers located themelves upon the public lands within its borders. I do not claim the honor of inducing and securing all these settlements but I cannot in justice to the immigration association, organized by the state legislature, refuse to accord to their board the credit due them in the general result, which from data in my possession, will not fall short of an increase of thirty thousand population of the state. Indeed some estimate the increase at double that number during the present season. We have at present time three agents in the eastern states and three in Europe, all under pay. Besides these, there are four agents commissioned in the old country and four in America without regular salary. Letters of recommendation have been given to several gentlemen who were willing to work for the state under the auspices of its board of immigration, without compensation. I am likewise in correspondence with several others living in the eastern states and in Europe who are willing from philanthropic, and some from interested motives, to assist in carrying out the noble objects for which the legislature established this organization.

Our efforts are much limited by the small appropriation placed at the disposal of the board which will doubtless be increased when the next legislature convenes and its members are awakened to the importance of making more effective the machinery for inducing immigration which the last legislature put in motion for the valuable ends which they in their wisdom foresaw could and should be accomplished.

We have a large domain to be peopled. We have an unproductive capital of millions of dollars locked up in our broad prairies which are as yet untilled and undeveloped: How to make this wealth available at the earliest period is a problem for every officer and citizen of the state to assist in working out by wise legislation and hearty support. The future welfare of the state may be anticipated and its success realized speedily or it may be deferred for many years either by want of co-operation and action; or by judicious and prompt measures. We to whom you have entrusted this important work are endeavoring to increase the efficiency of the board in every means within our power. Personally I feel the responsibility assumed by me in occupying the position of your state superintendent of immigration, and as keenly feel the embarrassments which I have labored under thus far from various causes, and not least found the inexperience and lack of practical knowledge of the past of every one in our state on this great subject of immigration, which has hitherto received so little thought or encouragement in Nebraska. This is one of the natural results consequent upon a busy life in a new state where every one is interested in his own individual enterprises, but which can be remedied even at this late day by efficient and well organized effort.

I have the honor to be sir,

Your obedient servant,

J. H. NOTEWARE,

State Supt, of Immigration.

Engrossed Bills.

Mr. REYNOLDS. Mr. President. Your committee on engrossing and enrolling to whom was referred the article on education, school funds and lands, and the judiciary article beg leave to report that they have examined the same and find them correctly engrossed.

Education.

The PRESIDENT. The article on education will be read now for the third time and put upon its passage.

The secretary proceeded to read the article, as follows:

Section. 1. The educational and school funds and lands of this state, shall be under the control and management of the legislature.

Sec. 2. All lands, money or other property granted or bequeathed, or in any manner conveyed to this state for educational purposes, shall be used and expended in accordance with the terms of such grant, bequest or conveyance.

Sec. 3. The following are hereby declared to be perpetual funds for common school purposes, of which the annual interest or income only can be appropriated, to-wit:

First, Such per centum as has been or may hereafter be granted by congress on the sale of lands in this state.

Second, All moneys arising from the sale or leasing of sections number sixteen and thirty-six in each township of this state, and the lands selected, or that may be selected, in lieu thereof.

Third, The proceeds of all lands that have been or may hereafter be granted to this state where, by the terms and conditions of such grant, the same are not to be otherwise appropriated.

Fourth, The net proceeds of lands and other property and effects, that may accrue to the state by escheat or forfeiture, or from unclaimed dividends or distributive shares of the estates of deceased persons.

Fifth, All moneys, stocks, bonds, lands and other property now belonging to the common school fund.

Sixth, All other grants, gifts and devises that have been or may hereafter be made to the state, and not otherwise appropriated by the terms of the grant, gift or devise, the interest arising from all of the funds mentioned in this section, together with all rents of the unsold school lands, and such other means as the legislature may provide, shall be exclusively applied to the following objects, to-wit:

(1.) To the support and maintenance of common schools in each school district in the state and the purchase of suitable libraries and apparatus therefor.

(2.) Any residue of such funds shall be appropriated to the support and maintenance of academies and normal schools, and schools of an intermediate grade between the common schools and the university, and the purchase of suitable libraries and apparatus therefor.

Sec. 4. All fines, penalties and license moneys arising under the general laws of the state, shall belong and be paid over to the counties respectively where the same may be levied or imposed; and all fines penalties and license moneys arising under the rules by-laws or ordinances of cities, villages, towns, precincts or other municipal subdivisions less than a county, shall belong and be paid over to the same respectively. All such fines penalties and license moneys shall be appropriated exclusively to the use and support of common schools in the respective subdivisions where the same may accrue, and the purchase of suitable libraries and apparatus therefor.

Sec. 5. The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable, and such schools shall be free, and without charge for tuition, to all children between the ages of five and twenty-one years.

Sec. 6. Provision shall be made by law for the equal distribution of the income of the fund set apart for the support of common schools, among the several school districts of the state, in proprtion to the number of children and youth resident therein, betwen the ages of five and twenty-one years; and no appropriation shall be made from said fund, to any district for the year in which a school shall not be maintained at least three months.

Sec. 7. No university, agricultural college, common school or other lands which are now held or may hereafter be acquired by the state for educational purposes, shall be sold for less than seven dollars per acre.

Sec. 8. All funds belonging to the state for educational purposes, the interest and income whereof only are to be used, shall be deemed trust funds held by the state; and the state shall supply all losses thereof that may in any manner accrue, so that the same shall remain forever inviolate and undiminished; and such funds with the interest and income thereof, are hereby solemnly pledged for the purposes for which they are granted and set apart, and shall not be transferred to any other fund for other uses.

Sec. 9. The general government of the university of Nebraska shall, under the direction of the legislature, be vested in a board of regents, to be styled the board of regents of the university of Nebraska; one member of which shall be elected in each judicial district by the electors thereof. Their duties, powers, and term of office shall be prescribed by law; and they shall receive no compensation, but may be reimbursed their actual expenses incurred in the discharge of their duties.

Sec. 10. The supervision of public instruction, shall be vested in the state superintendent of public instruction, and such other officers as the legislature shall provide.

Sec. 12. The secretary of state, treasurer, attorney general and commissioner of public lands and buildings, shall constitute a board of commissioners, for the sale, leasing and general management of all lands and funds, set apart for educational purposes, and for the investment of school funds, in such manner as may be prescribed by law.

Sec. 13. No sectarian instruction shall be allowed in any school or institutions supported in whole or in part by the public funds set apart for educational purposes, nor shall the state accept any grant, conveyance or bequest of money, lands or other property, to be used for sectarian purposes.

Mr. KIRKPATRICK. Mr. President. I ask the unanimous consent of the convention to make an alteration in section thirteen. After the word "supported" insert "in whole or in part." The object is to prevent the legislature from making an appropriation in favor of sectarian institutions as have been done in other states.

The PRESIDENT. The article is upon its passage, all in favor of its adoption will say "aye" as your names are called.

The secretary called the roll and the president announced the result: Yeas 40; absent and not voting 12, as follows:

YEAS.

Abbott,
Ballard,
Boyd,
Campbell,
Cassell,
Curtis,
Gibbs,
Granger,
Gray,
Griggs,
Hascall,
Hinman,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Ley,
Lyon,
McCann,
Majors,
Mason,
Moore,
Myers,
Newsom,
Philpott,
Price,
Reynolds,
Scofield,
Shaff,
Sprague,
Speice,
Stevenson,
Stewart,
Thummel,
Thomas,
Tisdel,
Towle,
Vifquain,
Weaver,
Wilson.—40.

ABSENT OR NOT VOTING.

Eaton,
Estabrook,
Grenell,
Manderson,
Maxwell,
Neligh,
Parchin,
Parker,
Wakeley,
Woolworth,
Mr. President.—12.

The PRESIDENT. The bill is passed, shall the title be agreed to? No objections being made it is agreed to.

Leave of Absence.

Mr. HINMAN. Mr. President. I ask an indefinite leave of absence.

Leave was granted.

Judiciary.

The secretary read the judiciary article.

Mr. LAKE. I move an amendment be made to this section as engrossed, that in the sixth line, before the word "cases," there be inserted the word "civil." Then, strike out "such civil cases where the state is a party."

Mr. THOMAS. I think it is the intention of the convention to allow the legislature to confer jurisdiction in such cases as they may deem proper. I would suggest that the amendment be inserted after the word "law" in the third line. If that amendment is inserted it would allow the legislature to confer the jurisdiction if it thought proper.

Mr. LAKE. It was all gone over in the committee of the whole, and also in the convention, and I believe it was the sense of this convention that cases in which the state was made a party and brought into court, they should be brought into the supreme court. It was not thought best that the state should be liable to be sued in every tribunal that may be created for the purpose of bringing suits. But there should be a tribunal at the capital in which those suits should be brought and that should be the supreme court.

The secretary read from his minutes: Mr. Robinson moved an amendment as follows:

"After "its" in the second line, say "shall have original jurisdiction in cases relative to the revenue, mandamus, quo warranto, habeas corpus, and such civil cases where the state is a party as the legislature shall provide; and such appelate jurisdiction as may be provided by law."

Mr. WAKELEY offered the following amendment to section two: Add after the word "revenue," the words "in cases where the state shall be a party."

Mr. ROBINSON. I accept the amendment.

The question was put and the amendment as amended was decided in the affirmative.

Mr. LAKE. The amendment offered by my colleague, (Mr. Wakeley,) is properly here, but not the amendment of the gentleman from Lancaster (Mr. Robinson.) I now move to insert the word "civil" before the word "cases" in the sixth line.

Mr. KIRKPATRICK. I believe, sir, this is a correct copy of the article of the convention.

Mr. LAKE. This is not a correct copy. The record, as just read, shows the amendment of the gentleman from Douglas was accepted by the gentleman from Lancaster. The journal itself shows it, I move to strike out "all such civil cases where the state is a party."

The PRESIDENT. The question is on inserting the word "civil."

Mr. WAKELEY. I think if this was referred to the judiciary committee by general consent this could be remedied.

Mr. THOMAS. I think the insertion of the word "civil' mars the section. But it seems to me this is still wrong. If it is allowed to remain another suit may be brought in the supreme court and the legislature could not prevent it. I would, therefore, second the motion of the gentleman from Douglas (Mr. Lake) that it be referred to the judiciary committee.

Mr. LAKE. Mr. President. There is no necessity for this. It seems that the word "civil," only, has been left out.

Mr. HASCALL. Mr. President. as we are so near the close of our session. I hope there will be nothing done to delay the proceedings.

The PRESIDENT. If there is no objection, the word "civil" will be inserted.

Mr. THOMAS. I would like to ask the chairman of the judiciary committee if he proposes that there shall be a jury in the supreme court, or whether he intends to try all these cases without a jury.

Mr. LAKE. Mr. President. It is my own opinion that we should leave the matter to the legislature to provide a jury, if they see fit, in special cases.

Mr. THOMAS. Mr. President. If you provide that the supreme court shall have supreme jurisdiction, there must be some provision for a jury in that court. It seems to me it is better to leave it to the legislature to say in what court the state may be tried.

Mr. LAKE. Mr. President. I would like to ask the gentleman if he desires to have the legislature provide a tribunal in which a person may be tried, without a provision for a grand jury.

Mr. THOMAS. No sir, but I would provide that the legislature may designate the court in which the state may be tried.

Mr. MASON. Mr. President. There is another provision in some part of the constitution relative to this matter.

Mr. REYNOLDS. Mr. President. Gentleman here have claimed that this bill is not engrossed in accordance with the journal. I claim sir, that it is right. The first amendment was offered by the gentleman from Lancaster (Mr. Robinson). Then an amendment to the amendment was offered from Douglas (Mr. Wakeley) Then the amendment of the gentleman from Douglas was accepted by the gentleman from Lancaster, whose amendment as amended, was agreed to by the committee.

Mr. LAKE. Mr. President. It is probably an oversight in the gentleman from Gage (Mr. Reynolds.) I think the journal shows the facts as they actually took place. The gentleman from Douglas (Mr. Wakeley) offered an amendment to the amendment of the gentleman from Lancaster (Mr. Robinson) who said he accepted it, which was as much as to say that it is more suitable. In the journal, the language is that the amendment was accepted; who by? By the gentleman from Lancaster (Mr. Robinson.)

Mr. REYNOLDS. Mr. Chairman. It seems to me that this acceptance does not do away with the original amendment.

The PRESIDENT. The question is upon the motion to strike out the words, "and such civil cases where the state is a party, as the legislature shall provide," and insert the word "civil" in the 6th line, after the word "revenue."

The amendment was agreed to and the section adopted.

The secretary read the next section, as follows:

Sec. 3. At least two terms of the supreme court shall be held in each year at the seat of government.

Mr. VIFQUAIN. Mr. President. Did he read "at such times as the legislature may provide?"

Mr. LAKE. Mr. President. It was stricken out, I think. Some one made a motion to that effect and I saw no one make objection. If the provision is not there, the legislature will provide, the same as though it were.

Mr. WAKELEY. Mr. President. My recollection is that Mr. Woolworth made a motion to strike that provision out, in order that the judges of the district court should fix the time for holding the supreme court.

The PRESIDENT. This will stand as it is unless objection is made. The clerk will proceed to read the remainder of the article.

The secretary read as follows:

Sec. 4. The judges of the supreme court shall be elected by the electors of the state at large, and their terms of office except of those chosen at the first election as hereinafter provided shall be six years.

Sec. 5. The judges of the supreme court shall, immediately after the first election under this constitution, be classified by lot, so that one shall hold his office for the term of two years, one for the term of four years and one for the term of six years.

Sec. 6. The judge of the supreme court having the shortest term to serve, not holding his office by appointment, or election to fill vacancy, shall be the chief justice, and as such shall preside at all terms of the supreme court, and in case of his absence the judge having in like manner the next shortest term to serve, shall preside in his stead.

Sec. 7. No person shall be eligible to the office of judge of the supreme court unless he shall be at least thirty years of age, and a citizen of the United States; nor unless he shall have resided in this state at least three years next preceding his election.

Sec. 8. The supreme court shall appoint a reporter and clerk of said court who shall have their offices respectively for the term of three years subject to removal by the court, and whose duties shall be prescribed by law.

DISTRICT COURTS.

Sec. 9. The district courts shall have original jurisdiction in all cases of law and equity, and such appellate jurisdiction as is or may be provided by law.

Sec. 10. The state shall be divided into five judicial districts, in each of which shall be elected one judge, who shall be judge of the district court therein, and whose term of office shall be four years, and until otherwise provided by law, said districts shall be as follows:

First District.—The counties of Nemaha, Richardson, Johnson, Pawnee, Gage, Jefferson and Saline.

Second District.—Otoe, Cass, Lancaster, Seward and Butler.

Third District.—Douglas and Sarpy.

Fourth District. — Washington, Dodge, Colfax, Burt, Cuming, Stanton, Madison, Wayne, Pierce, Dakota, Dixon, Cedar, Antelope, L'Eau-qui-Court and the counties lying due west of L'Eau-qui-Court.

Fifth District.—The counties of Platte, Boone, Greeley, Howard, Hall, Merrick, Polk, York, Fillmore, Thayer Nuckolls, Clay, Hamilton, Adams, Webster, Franklin, Kearney, Harlan, Buffalo, Sherman, Dawson, Lincoln, Cheyenne and all other counties and territory not included in any other judicial district.

Sec. 11. The legislature may in the year 1875, and every five years thereafter, increase the number of judges of the district courts and the judicial districts of the state.

Mr. PHILPOTT. Mr. President. I move to amend by adding the words, "such districts shall be formed by compact territory and bounded by county lines and such increase in the boundary of any district shall not affect or vacate the office of any judge."

Mr. LAKE. If the gentleman will include in his amendment the words "whenever two-thirds of the members of each house shall concur therein," it will be as it was amended in the convention.

Mr. PHILPOTT. I will accept that amendment.

Mr. ABBOTT. Mr. President. I move you, sir, that this engrossed bill be recommitted to the committee on judiciary for correction.

The motion was not agreed to.

The PRESIDENT. The question is on the amendment of the gentleman from Lancaster (Mr. Philpott.)

The amendment was agreed to.

The secretary read as follows:

Sec. 12. Judges of the district courts may hold courts for each other and shall do so when required by law.

Sec. 13. The judges of the supreme court shall each receive a salary of $3,500, and the judges of the district courts shall each receive a salary of $2,500 per annum, payable quarterly until otherwise provided by law, and after said salaries shall be fixed by law they shall not be increased or diminished during the term for which said judges shall be respectively elected.

Sec. 14. No judge of the supreme or district courts shall receive any other compensation, perquisite or benefit, in any form whatsoever, nor perform any other than judicial duties, to which may belong any emoluments.

Sec. 15. There shall be elected in and for each organized county, one judge, who shall be judge of the county courts of such county and whose term of office shall be two years.

Sec. 16. County courts shall be courts of record, and shall have original jurisdiction in all matters of probate, settlement of estates of deceased persons, appointment of guardians, and settlement of their accounts in all matters relating to apprentices; and in proceedings for the collection of taxes, and assessments, and such other jurisdiction as may be given by general law, Provided, that in counties having a population of three thousand and upwards, the legislature may confer upon said courts jurisdiction to sell real estate on execution and in sales of real estate by executors, administrators, and guardians; but they shall not have jurisdiction in criminal cases in which the punishment may exceed six months imprisonment, or a fine of over five hundred dollars, nor in actions in which the title to real estate is sought to be recovered, or may be drawn in question, nor in actions on mortgages or on contracts for the conveyance of real estate; nor when the debt or sum claimed shall exceed five hundred dollars.

Mr. GRIGGS. Mr President. I ask the unanimous consent of the convention to strike out that portion conferring upon county courts jurisdiction to sell real estate on execution. ("Object.") ("Object.")

Committee of the Whole.

Mr. MYERS. Mr. President. I move the convention resolve itself into committee of the whole for the purpose of striking out that amendment.

Mr. ESTABROOK. I think the only way is to refer it back to the committee with instructions .

Mr. MYERS. For future reference I wish to state my point of order. In order to overcome an objection which will prevent an amendment from being passed, I now say that it is necessary to go into committee of the whole, where a majority can control it and then report it to the house again amended.

Mr. HASCALL. Mr. President. There is a way to reach this. If the article as adopted by the convention is improperly engrossed, it is proper to have it re-engrossed, that it may correspond with the journal. That is the relief we have.

Mr. ESTABROOK. There have been many instances where the amendments were not properly kept. It is impossible except by recollection to state what amendments were made; unless there is some better way than that to get at it, we must take it in a very imperfect form.

Mr. ABBOTT. Allow me to ask a question. If this can be recommitted, can we not recommit the whole constitution?

Mr. ESTABROOK. Certainly

Mr. ABBOTT. When can we get through if that is the case?

Mr. ESTABROOK. I would rather sit here twenty years longer than submit an imperfect constitution.

Mr. STEWART. I think the only way is to suspend the rule.

Mr. KIRKPATRICK. The engrossment committee saw there was something wrong with this bill. It can be re-engrossed if it is shown it is not proper. I believe the convention can modify that bill by re-committing the whole thing.

The PRESIDENT. Rule fifty which is as follows decides this question:

No. 50. Every article which it is proposed shall form a part of the constitution, shall be read the first and second times, and be referred to the committee of the whole; and after it shall have been considered in committee of the whole, and after the amendments reported by the committee of the whole, shall have been acted on, it shall be open to amendment, in the convention; and where there are no further amendments to be proposed, the question shall be on ordering the article to be engrossed for its third reading; and after the same shall have been engrossed the same shall not be amended except by the unanimous consent of the convention."

The proper way is to suspend the rule.

Mr. LAKE. Mr. President. The motion of the gentleman from Gage was voted down almost unanimously in committee of the whole.

Mr. KENASTON. I desire to ask unanimous consent to amend the section in relation to salaries, so as to reduce the salaries of the judges of supreme court to $3,000.

The amendment was not agreed to.

Mr. MYERS. I now make a motion that this convention go into committee of the whole for the purpose of considering the amendment of the gentleman from Cass (Mr. Kenaston.)

The motion was not agreed to.

The secretary proceeded to read:

Sec. 17. Appeals to the district courts from the judgments of county courts shall be allowed in all criminal cases, on application of the defendant; and all civil cases, on application of either party, in which the amount in controversy shall exceed twenty-five dollars; and in such other cases as the legislature may provide.

Sec. 18. Justices of the peace and police magistrates shall be elected in and for such districts, and have and exercise such jurisdiction as may be provided by law, Provided, that no justice of the peace shall have jurisdiction of any civil cause when the amount in controversy shall exceed one hundred dollars; nor in a criminal cause where the punishment may exceed three months imprisonment or a fine of over one hundred dollars; nor in any cause involving the title to real estate.

Sec. 19. All laws relating to the courts shall be general and of uniform operation; and organization, jurisdiction, powers, proceedings and practice of all courts of the same class, or grade, so far as regulated by law; and the force, and effect of the process, judgments and decrees of such courts, severally, shall be uniform. The legislature may for cause entered on the journals, upon due notice, and opportunity for defence remove from office any judge of the supreme or district court, upon concurrence of three-fourths of all the members elected of each house. All other officers in this article mentioned shall be removed from office on prosecution, and final conviction for misdemeanor in office, in such manner as may be provided by law.

Sec. 21. All judges of courts of record inferior to the supreme court shall on or before the first day of June of each year, report in writing to the judges of the supreme court such defects and omissions in the laws as their experience may suggest; and the judges of the supreme court shall, on or before the first day of January of each year, report in writing to the governor, such defects and omissions in the constitution, and laws, as they may find to exist, together with appropriate forms of bills to cure such defects and omissions in the laws.

The judges of the several district courts shall report to the next legislature the number of days they have held court in each of the several counties comprising their respective districts, during the preceding year.

Mr. PHILPOTT. I move to insert the word "two" between "the" and "preceding" in the twenty-first section.

The motion was not agreed to.

Mr. TOWLE. This was copied from the same provision of the constitution of Illinois, and there it reads "during the preceding two years."

The secretary proceeded to read:

Sec. 22. All officers provided for in this article shall hold their office until their successors shall be qualified, and they shall respectively reside in the district, county or precinct for which they shall be elected or appointed.

The terms of office of all such officers, when not otherwise prescribed in this article shall be ten years. All officers, where not otherwise provided for in this article, shall perform such duties and receive such compensation as may be prescribed by law

Sec. 23 In case the office of any judge of the supreme court or of any district court shall become vacant, before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor, until a successor shall be elected and qualified; and such successor shall be elected for the unexpired term, at the first annual election that occurs more than thirty days after the vacancy shall have happened. Vacancies in all other elective offices provided for in this article shall be filled by election, but where the unexpired term does not exceed one year, the vacancy may be filled by appointment in such manner as the legislature may provide.

Sec. 24. The legislature shall provide by law, in what manner and in what courts suits may be brought against the state.

Sec. 25. The several judges of the courts of record in this state shall have such jurisdiction at chambers, as may be provided by law.

Sec. 26. All process shall run "In the name of the People of the State of Nebraska," and all prosecutions shall be carried on "In the name of the People of the State of Nebraska," and conclude "against the peace and dignity of the same."

Sec. 29. No salary or compensation shall be paid by the state to any county judge.

The PRESIDENT. Gentlemen. This is the third reading of the bill. The question is upon its passage.

Mr. LAKE. Would it not be better to have this engrossed so as to have a complete copy? It is in terrible condition. I will make a motion to that effect.

The motion was not agreed to.

The PRESIDENT. Gentlemen, as many as favor the passage of this bill will, as your names are called, answer aye; to the contrary no.

The secretary called the roll.

Mr. MANDERSON. (When his name was called)—Mr. President. I wish to vote "no," and I wish leave of the convention to place upon the journal, hereafter, my reasons. I vote "no."

The president announced the result—ayes, 26; nays, 16; as follows:

YEAS.

Abbott,
Gibbs,
Granger,
Gray,
Griggs,
Hascall,
Kenaston,
Kilburn,
Lake,
Lyon,
Majors,
Maxwell,
Moore,
McCann,
Philpott,
Price,
Reynolds,
Sprague,
Scofield,
Speice,
Shaff,
Thummel,
Tisdel,
Towle,
Vifquain,
Mr. President.—26.

NAYS.

Boyd,
Curtis,
Campbell,
Estabrook,
Kirkpatrick,
Mason,
Manderson,
Myers,
Neligh,
Newsom,
Stevenson,
Stewart,
Thomas,
Wakeley,
Weaver,
Wilson.—16.

ABSENT OR NOT VOTING.

Ballard,
Cassell,
Eaton,
Grenell,
Hinman,
Ley,
Parchin,
Parker,
Robinson,
Woolworth.—10.

So the bill passed.

The PRESIDENT. Is the title agreed to.

The title was agreed to.

Committee of the Whole.

Mr. MYERS. Mr. President. I move this convention now resolve itself into committee of the whole for the purpose of considering the report of the legislative committee.

The motion was agreed to.

So the convention resolved itself into committee of the whole with Mr. Scofield in the chair for the purpose of considering the legislative article.

The chairman read the 9th section, as follows:

Sec. 9. No person shall be a senator who shall not have attained the age of twenty-five years, and have been an inhabitant of the state three years next before his election, and the last year thereof an inhabitant of the district for which he shall be chosen, unless he shall have been absent on the public business of the United States or this state; and no person elected as aforesaid shall hold office after he shall have removed from such district.

Mr. PRICE. Mr. Chairman. I move to strike out the word "three," in the second line, and insert the word "two."

The amendment was agreed to.

Mr. BOYD. Mr. Chairman. I move to strike out the word "and" where it first appears, and insert the words "nor a senator nor representative who shall not."

Mr. HASCALL. Mr. Chairman. I think this should not apply to representatives. It may do for senatorial districts as they have more territory to choose from.

The CHAIRMAN. The question is upon the amendment offered by the gentleman from Douglas.

The amendment was not agreed to.

The CHAIRMAN. The question is upon the adoption of the section.

The section was adopted.

The Chairman read the next section, as follows:

Sec. 10. No person being a member of congress, or holding any judicial or military office under the United States, shall hold a seat in the legislature.

And if any person shall, after his election as a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

Mr. TOWLE. Mr. Chairman. I desire to amend the section by inserting the words "no person holding office under authority of the United States" as the first paragraph in the section.

Mr. HASCALL. Mr. Chairman. I think it is evident that the word "civil" before "office"——

Mr. TOWLE. Mr. Chairman. I move to strike out the word "judicial" and insert "civil."

Mr. SPEICE. Mr. Chairman. I move to amend the amendment by striking out the words "judicial or military office" and insert "civil."

The CHAIRMAN. The question is upon the amendment offered by the gentleman from Platte (Mr. Speice.)

The amendment was agreed to.

Mr. WAKELEY. Mr. Chairman. I wish to amend the section by inserting, after the words "United States," in the second line the words "except the office of post master."

Mr. MYERS. Mr. Chairman. This general law relating to those holding office under the United States, relates to members of the legislature. Now, why make an exception in favor of post masters? I don't see anything so peculiarly ornamental about post masters that they should be excepted. This convention is opposed to special legislation, too.

Mr. PRICE. Mr. Chairman. I don't see why post masters should be exempted. If you do, why not exempt county officers. Some of these post offices are extremely lucrative.

Mr. HASCALL. Mr. Chairman. It is desirable, for the interests of the state, that a responsible man should hold this office in the remote sections, for the benefit of the people and not for his own benefit, because the pay is generally very small. That is the reason why we should not exclude these persons from holding a seat in the legislature.

Mr. NEWSOM. Mr. Chairman. I move as a substitute for the section the following:

"No person shall be a senator or a representative who shall not be a citizen of the United States, and who shall not have been for five years a resident of the state, and for two years next preceding his election a resident within the territory forming the district from which he is elected. No judge or clerk of any court, secretary of state, attorney general, recorder, sheriff, or collector of public revenue, member of either house of congress, or person holding any lucrative office under the United States or this state, or any foreign government, shall have a seat in the general assembly: Provided, that appointments in the militia, and the offices of notary public and justice of the peace, shall not be considered lucrative. Nor shall any person holding any office of honor or profit under any foreign government, or under the government of the United States, (except postmasters whose annual compensation does not exceed the sum of $300,) hold any office of honor or profit under the authority of this state."

The committee divided and the substitute was not agreed to.

The CHAIRMAN. The question is on the amendment of the gentleman from Douglas (Mr. Wakeley) to insert after the word "states" in the second line the words "except the office of postmaster "

Mr. THOMAS. I move to insert after the word "postmaster" the words "whose annual compensation does not exceed the sum of $300."

Mr. WAKELEY. I will accept that amendment.

Mr. TOWLE. Mr. Chairman. I will offer this as an amendment, "or any lucrative office under the authority of this state," to be inserted after the word "state."

Mr. GRIGGS. Mr. Chairman. I don't know whether that amendment has been seconded—(I second it.) It seems to me it ought not to be inserted here for this only applies to the offices of the United States.

Mr. TOWLE. Mr. Chairman. I will change the word "lucrative" to "salaried."

The CHAIRMAN. The question is on the amendment of the gentleman from Richardson.

The amendment was not agreed to.

Mr. NEWSOM. Mr. Chairman. As this section stands now, I understand that any member of the executive department may be a member of the legislature I am sure that it is not the intention of this convention to so provide; he is not restricted or prohibited from holding any office, and I will say this, that in my judgment we cannot do better than to take the section as contained in the Illinois constitution. It is not in the power of any person here on the spur of the moment to propose an amendment better than that provided in their constitution which took three to six months to prepare, which section I have offered as a substitute here.

Mr. VIFQUAIN. Will the gentleman allow me to suggest that section five of the executive article provides for this; it says that no executive officer shall hold any other office created by this constitution

Mr NEWSOM. But that don't apply to this article. Each part of this instrument should be complete of itself, so that there can be no mistake. I cannot vote for this proposition as it stands.

Mr TOWLE. Mr. Chairman. I believe it is the desire of this convention to exclude a certain class of officers of this state as well as the United States from holding office and being members of the legislature at the same time. I believe it is the desire that certain officers of the United States whose compensation comes within a certain limited range should be eligible as members of the legislature. I have a substitute, almost an exact copy of the Ohio clause. "No person being a member of congress or holding any office under the United States, or any lucrative office under the authority of this state shall be eligible to or have a seat in the legislature, but this provision shall not extend to post masters whose annual compensation shall not exceed $300, nor to township officers, justices of the peace, notaries public, or officers of the militia." I move that the substitute be adopted in place of the first two lines of section nine.

Mr. WAKELEY. I suggest that the word "precinct" be inserted after "township."

Mr. TOWLE. I accept.

Mr. BALLARD. I shall vote against the whole thing. My theory is if a man has an office let him attend to his business.

The committee divided and the motion was agreed to.

Mr. CAMPBELL. I move to strike out the last three lines of the section.

The motion was agreed to.

Mr. SPRAGUE. Mr. Chairman. It strikes me this thing is not what it should be. The office of county commissioner may be said to be lucrative or not. It is necessary in order to have this thing fairly understood; there should be some definition to the word lucrative. I move that the word "salaried" be inserted in place of the word "lucrative."

Mr. STEVENSON. I should like to know if the amendment prevails, how it will apply to any office in the county whatever. I do not know of an officer who receives a salary, they are generally paid in fees.

Mr. HASCALL. I rise to a point of order. If the gentleman desired to amend the substitute he should have done it before it was adopted.

The CHAIRMAN. The amendment will be entertained.

Mr. SPRAGUE. I move to amend further by adding "county officers" before "township or precinct."

Mr. KIRKPATRICK. Some county officers in this state are making more than state officers, and some of them are salaried officers.

Mr. TOWLE. Mr. Chairman. I hope the amendment will not prevail. The idea is to keep out a certain class of county officers who derive their subsistence from the people. If they were allowed to become members of the legislature we might have a body made up entirely of county and state officers, and who might raise their fees and get rich. The word "lucrative" has a fixed and settled meaning; it is used in nearly every state constitution in the United States, and I believe county offices are lucrative.

Mr. BALLARD. Mr. Chairman. If that be true that these county officers might come in here and get rich, I move we insert the word "coroner" in connection with it.

Mr. THOMAS. Mr. Chairman. It seems to me if the amendment offered shall prevail, the county treasurer would be eligible to a seat in the legislature, also the county clerk and probate judge. I presume no one thinks the county clerk should be a member of the legislature. I think the amendment ought not to prevail.

Mr. SPRAGUE. If there is a county officer who is not a lucrative officer, my amendment would permit him to become a member of the legislature.

Mr. THOMAS. Is there any such officer?

Mr. SPRAGUE. I think there is if the definition of the word lucrative is such an office that pays a large amount. The county commissioners receive three dollars per day, is that a lucrative office? I do not think it is. If not my amendment will allow them to become members of the legislature.

Mr. KIRKPATRICK. Mr. Chairman. This motion ought not to prevail. County officers ought to perform the duties of the county, and not have seats in the legislature. There are good reasons why they should not.

The CHAIRMAN. The question is on the amendment of Mr. Sprague.

The amendment was not agreed to.

Mr. MYERS. I move to strike out the word "punishable."

The motion was not agreed to.

The section as amended was adopted.

The Chairman read the next section, as follows:

Sec. 10. No person who shall be convicted of the embezzlement or defalcation of the public funds of this state shall ever be eligible to any office of honor, trust or profit under this state; nor shall any person convicted of felony exercise the right of suffrage or be eligible to office, unless he shall have been restored to civil rights.

Mr. NEWSOM. I move to insert after the word "shall," in the first line, the words "have been."

Mr. TOWLE. That is contrary to common sense, reason and jurisprudence and anything else.

Mr. BOYD. I would ask the gentleman from Richardson, if "has been or hereafter shall be" is any better.

Mr. TOWLE. That is all right.

The motion was not agreed to.

Mr. BOYD. I move to strike out the word "felony", in the third line, and insert "bribery, perjury or other infamous crime."

Mr. MOORE. I move to amend the amendment by striking out the words "or other infamous crime."

Mr. ESTABROOK. Mr. Chairman. Will the gentleman tell me what he means by "infamous crime?" Can anybody tell me?

Mr. MYERS. I can,—stealing the public money is an infamous crime.

Mr. ESTABROOK. I simply rose to inquire. It has, in the common law, a definite meaning which it cannot have here.

Mr. TOWLE. I think our criminal code has described certain acts as being infamous crimes.

Mr. ESTABROOK. The common law has a definite meaning, and when our laws are defined by the common law we must take the definition of those things that we find are there.

The amendment to the amendment was not agreed to.

The amendment was agreed to.

The CHAIRMAN. The question is upon the adoption of the section.

Mr. BOYD. I think the words "exercise the rights of suffrage or" in the third line ought to be stricken out. I do not believe in putting all the constitution in the article on "legislative." I move to strike out those words; and also the words "who shall be" in the first line.

Mr. WAKELEY. I would make a suggestion based upon that idea. I think it ought to be in the "Miscellaneous Article." It has no place in this, I think.

The amendment was not agreed to.

The tenth section as amended was adopted.

The Chairman read the next section, as follows:

Sec. 11. The legislature shall determine what persons shall constitute the militia of the state, and may provide for organizing and disciplining the same in such manner as shall be prescribed by law.

Mr. VIFQUAIN. I move to strike out the section.

The motion was agreed to.

The Chairman read the next section, as follows:

Sec. 12. The legislature may declare the cases in which any office shall be deemed vacant, and also the manner of filling the vacancy, where no provision is made for that purpose in this constitution.

Mr. KIRKPATRICK. This gives the whole power to the legislature. It may conflict, to some extent with the article which has been adopted.

The Twelfth section was adopted.

The Chairman read the next section, as follows:

Sec. 13. The legislature shall never grant any extra compensation to any public officer, agent, servant, or contractor, after the services shall have been rendered or the contract entered into; nor shall the compensation of any public officer be increased or diminished during his term of office.

The thirteenth section was adopted.

The Chairman read the next section, as follows:

Sec. 14. The house of representatives shall have the sole power of impeachment, but a majority of all members elected must concur therein.

All impeachments shall be tried by the senate, and, when sitting for that purpose, the senators shall be upon oath or affirmation to do justice according to law and evidence.

When the governor of the state is tried, the chief justice shall preside.

No person shall be convicted without the concurrence of two-thirds of the senators elected; but judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, profit or trust under this state; but the impeached shall nevertheless be liable to indictment and punishment according to law.

No officer shall exercise his office after he shall have been impeached until he shall have been acquitted.

Mr. SPRAGUE. I move to amend this section by striking out, in the fifth line, the words "when the governor of the state is tried," and insert, "in all trials of impeachment."

Mr. ABBOTT. I Suppose the chief justice was to be impeached?

Mr. SPRAGUE. I think some alteration should be made.

Mr. WAKELEY. Mr. Chairman. I think the section needs one amendment. I move to insert, after the word "impeached," in the 10th line, the words "notified thereof."

The CHAIRMAN. The question is upon the amendment of the gentleman from Douglas (Mr. Wakeley.)

The amendment was agreed to.

The CHAIRMAN. The question is upon the section as amended.

The section was adopted.

The chairman read the next section, as follows

Sec. 15. The governor, secretary of state, auditor, treasurer, judges of the supreme court and district courts, and all other elective state officers, shall be liable to impeachment for any misdemeanor in office.

Mr. WEAVER. Mr. Chairman. I move to strike out the section, as the matter is already provided for.

The CHAIRMAN. The question is upon the motion to strike out the section.

Mr. BOYD. Mr. Chairman. I will state that section 15 in this article was adopted in the executive article, as follows:

"The governor and all civil officers of this state shall be liable to impeachment for misdemeanor in office."

Mr. WAKELEY. Mr. Chairman. I think the word "judiciary" should be somewhere in this constitution. I am not clear at this moment, that the word "civil" will include the judiciary I was not present when the executive article was considered, but I am told that section 15 of the executive article as reported was stricken out and a provision adopted which reads "the governor and civil officers,etc."

Mr. LAKE. Mr. Chairman. I would ask my colleague if the term "all civil officers" does not include judges?

Mr. WAKELEY. Mr. Chairman. I know that in the impeachment trial of Blount, the court held that a United States senator was not a civil officer. It may be that judges would be so held.

Mr. ESTABROOK. Mr. Chairman. I will read Sec. 4, article 2 of the United States constitution:

"The president and vice-president and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors."

It has been held, and justly, that senators are civil officers.

Mr. WAKELEY. I simply brought this matter up, Mr. Chairman, in order to find in what light the committee viewed it.

Mr. REYNOLDS. Mr. Chairman. I would state that the section as it appears in the engrossed copy of the executive article reads, "The governor and all civil officers of this state shall be liable to impeachment for misdemeanor in office."

The chairman read the next section, as follows:

Sec. 16. Members of the legislature, and all other officers, elective and judicial, except such inferior officers as may be by law exempted, shall before they enter on the duties of their respective offices take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be,) that I will support the constitution of the United States, and the constitution of the state of Nebraska, and that I will faithfully discharge the duties of the office of————with fidelity, and according to the best of my ability."

Mr. MAXWELL. Mr. Chairman. I move to amend this section by striking out the oath and substituting that in the executive article.

Mr. TOWLE. Mr. Chairman. I move an amendment to strike out all between the words "legislature" to the word "shall" in the second line. I believe that this article should be confined to the legislative department.

Mr. THOMAS. Mr. Chairman. I will offer the following from the Illinois constitution as a substitute for the section. It reads as follows:

"Members of the general assembly, before they enter upon their official duties, shall take and subscribe the following oath or affirmation:

I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Illinois, and will faithfully discharge the duties of senator (or representative) according to the best of my ability; and that I have not, knowingly or intentionally, paid or contributed anything, or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill the said office, and have not accepted, nor will I accept or receive, directly or indirectly, any money or other valuable thing, from any corporation, company or person, for any vote or influence I may give or withold on any bill, resolution or appropriation, or for any other official act.

This oath shall be administered by a judge of the supreme or circuit court in the hall of the house to which the member is elected, and the secretary of state shall record and file the oath subscribed by each member. Any member who shall refuse to take the oath herein prescribed shall forfeit his office, and every member who shall be convicted of having sworn falsely to, or of violating, his said oath, shall forfeit his office and be disqualified thereafter from holding any office of profit or trust in this state."

Mr. MAXWELL. Mr. Chairman. I will agree to that and withdraw my amendment.

The substitute was adopted.

The chairman read the next section, as follows:

Sec. 17. Every bill which shall have passed both houses shall be presented to the governor. If he approve, he shall sign it; but if he shall not approve, he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large upon their journal, and proceed to re-consider it. If, after such re-consideration, two-thirds of that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which likewise it shall be re-considered, and if approved by two-thirds of that house, it shall become a law; but in such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journals of each house respectively. If any bill shall not be returned by the governor within five days (Sunday excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, *unless the legislature, by their adjournment*, prevented its return, in which case it shall be a law unless sent back within three days after their next meeting.

Mr. BOYD. Mr. Chairman. Section sixteen of the executive article is exactly the same as this, therefore I move to strike it out.

The motion was agreed to.

The chairman read the next section, as follows:

Sec. 18. Every order, resolution or vote to which the concurrence of both houses may be necessary (except on a question of adjournment) shall be presented to the governor, and before it shall take effect be approved by him, or, being disapproved shall be re-passed by two-thirds of both houses, according to the rules and limitations prescribed in case of a bill.

Section eighteen was adopted.

The chairman read the next section, as follows:

Sec. 19. Any bill may originate in either house of the legislature, except bills appropriating money, which shall originate only in the house of representatives; and all bills passed by one house may be amended by the other.

Section nineteen was adopted.

The chairman read the next section, as follows:

Sec. 20. The legislature shall never sell or dispose of the salt springs, or saline lands connected therewith, belonging to this state, but may authorize the purchase of contiguous lands thereto by authority of law, as may be necessary for the convenience and interest of the state.

Mr. TOWLE. Mr. Chairman. I understand that there are a great many lands in the state which have been selected as saline lands which are not saline lands, nor have salt springs on them. I move therefore that the section be struck out.

The motion was not agreed to.

Mr. PHILPOTT. Mr. Chairman, I move to amend by striking out the words "saline lands connected therewith," and insert, "the sections on which they are located."

Mr. ROBINSON. It strikes me, Mr. Chairman, that under the act of congress ceding these lands that we have about seventy-two sections altogether and that only a portion of them actually have salt springs upon them.

Mr. PHILPOTT. Mr. Chairman. There are twelve salt springs and for each spring the state was to receive six sections of land, making seventy-two sections. I am in favor of retaining the sections on which the springs are located, and selling the rest of the lands to develop the springs.

Mr. HASCALL. I think the amendment is a good one, all these lands are not saline lands in reality, although called such. They were selected under the act granting them and selected wherever they could be found. Now the lands which we should reserve to the state inviolate should be those which are actually saline lands. We might have some other institution in the state to which we might wish to give these lands; they are really agricultural lands.

Mr. LAKE. Mr. Chairman. For one, I can see no reason why lands that have not actually salt springs on them, should be held inviolate any more than in the case of any other lands which we may have. It is necessary however, that those lands upon which saline springs are found and which may be used hereafter by the state by leasing to parties, should be reserved by the state. The title to these should be retained in the state; as has been said by the gentleman from Lancaster (Mr. Philpott,) there is no reason why all the lands which are designated as saline lands should be retained by the state, they might be disposed of to the best advantage where there are no springs upon them. I trust the amendment offered by the gentleman from Lancaster will prevail.

Mr. MYERS. Mr. Chairman. I simply desire to say the committee considered this whole matter, and it was their understanding that these lands were contiguous to the saline lands and were necessary for the proper working of the salt springs. I do not think this includes agricultural lands.

Mr. KIRKPATRICK. Mr. Chairman. These lands were not granted to the state because they were saline lands. It was simply done in pursuance of a precedent that had been established in other states. I think the committee have reported fairly.

Mr. McCANN. Mr. Chairman. The object of this section was to retain those lands which might be necessary for the purpose of developing these salt springs, and if gentlemen will look further in the section they will find they may authorize the purchase of contiguous lands thereof by authority of law, etc. The object was to retain only so much land as might be necessary for the development of the salt springs.

Mr. ROBINSON. Mr. Chairman. I have a substitute I desire to offer.

"The legislature shall never alienate the salt springs belonging to this state but may dispose of the lands connected therewith or purchase other contiguous lands for the purpose of developing said springs, but for no other purpose."

I think if the state undertakes to develop these springs, she is obliged to dispense with these lands in order to do so.

Mr. ESTABROOK. If I am rightly informed there are only about as many as are embraced in twelve sections.

Mr. HASCALL. I will inform the gentleman in regard to that. I think although we have got our complement of seventy-two sections of land, we have not more than twelve saline springs. We are allowed to select just the same as though we had that number.

Mr. ESTABROOK. How may saline lands remain to the state now?

Mr. HASCALL. I can only estimate. I think we have from 12,000 to 16,000 acres. Twenty sections were donated to the State Normal school for an endowment fund.

Mr. ABBOTT. Mr. Chairman. I move that the section be re-referred to the committee with instructions to prepare a section which shall prevent the legislature from disposing of the salt springs.

Mr. STRICKLAND. Mr. Chairman. I second the motion. I understand there were about 12,000 acres of these saline lands selected thirty miles from these salt works. These lands will necessarily have to be disposed of in order to develop the salt interests here.

Mr. MAXWELL. I do not see what is to be gained by re-referring it. These amendments, it seems to me suit the case.

Mr. STRICKLAND. Mr. Chairman. When this selection was made we could not get contiguous sections, and other sections were taken in lieu thereof and are simply agricultural lands. What is the great purpose of the government today? It is to develop these salt works. How? By disposing of these lands of little or no value so as to develop the interests we have here in salt, and a prohibitory clause would just leave that whole mine, which would be a source of wealth equivalent to paying the entire state tax I will read the law on these lands, approved April 19, 1864.

"Sec 11. And be it further enacted, That all salt springs within said state, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to said state for its use, the said land to be selected by the governor thereof, within one year after the admission of the state, and when so selected to be used or disposed of on such terms, conditions, or regulations as the legislature shall direct: Provided That no salt springs or lands, the right whereof is now invested in any individual or individuals, or which hereafter shall be confirmed or adjudged to any individual or individuals, shall, by this act be granted to said state."

Mr. PHILPOTT Mr. Chairman. I hope the object of my amendment will not be overlooked. The whole object of my amendment is to determine what lands may be sold and what shall be retained. By the section as it stands, saline lands connected therewith. We wish to take just seventy-two sections, let the legislature dispose of the rest as they may direct.

Mr. McCANN. I think there is some confusion in regard to the number of acres proposed to be retained and the number it is proposed to sell. We received from the general government 46,080 acres called saline lands, although those lands in the immediate neighborhood of the salt springs are not saline lands but agricultural lands. We have disposed of 12,200 acres, leaving 26,200 acres. Now we propose to retain for the state which we can never sell, the twelve salt springs, and those sections of land upon which the springs are located, and 7,680 acres; and that leaves us 26,200 acres of land to be sold as the legislature may provide.

Mr. STRICKLAND. That is just what I meant. That these lands should be sold to develop the springs. They are not salt lands and should not be held to the state. Only such should be held as are necessary to developing the salt interests.

Mr. McCANN. If the gentleman will support the amendment of the gentleman from Lancaster he places this beyond doubt.

Mr. ABBOTT. I withdraw the motion to refer to the committee.

Mr. MAXWELL. I offer a substitute to this section, as follows:

"The legislature shall never sell the saline lands on which salt springs are situated, but may provide for selling the other lands not connected therewith."

Now the legislature undoubtedly has the right to purchase any land that may be necessary. The amendment provides that they shall not sell the lands upon which the salt springs are situated, but may sell other lands not connected therewith.

Mr. LAKE. It is substantially the same as the one offered by the gentleman from Lancaster, and I think is out of order.

The CHAIRMAN. It is out of order.

Mr. PHILPOTT. I will not accept it.

Mr. MAXWELL. The reason I offered my amendment is that there is no provision in the amendment offered by the gentleman from Lancaster to provide for selling the other saline lands; but this provides for retaining those with salt springs on, and that others may be sold that are not connected therewith.

Mr. LAKE. Does not the legislature have authority to dispose of those lands without constitutional authority?

Mr. MAXWELL. This makes the restriction clear. Here you attempt to impose a restriction as to the sale and this makes that restriction clear.

The CHAIRMAN. The proposition before the committee is the substitution of the gentleman from Lancaster (Mr. Robinson.)

Mr. MAXWELL. I withdraw my amendment.

Mr. ESTABROOK. Mr. Chairman. There is one clause which is indefinite, and I would like it were specific. If the idea is to give the state permission to purchase lands for the use of evaporating grounds. I have no objection. But if the legislature is allowed to buy large tracts and sell again and for no other purpose only than speculation, I shall object. Every state in the union has gone on and sold for other purposes.

The substitute of Mr. Robinson was adopted.

The Chairman read the next section, as follows:

Sec. 21. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds expel a member, but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free state.

Mr. BOYD. Mr. Chairman. That section is covered by the section adopted yesterday. Section nine of the legislative article, offered by Judge Hascall—where it says "a majority of the members elected to each house shall constitute a quorum." I move the section be stricken out.

The motion was agreed to.

The Chairman read the next section, as follows:

> Sec. 22. Each house shall keep a journal of its proceedings, and publish them, (except such parts as may require secrecy,) and the yeas and nays of the members on any question shall, at the desire of any two of them, be entered on the journal.
>
> All votes in either house shall be "viva voce."
>
> The doors of each house, and committee of the whole, shall be open, unless when the business shall be as ought to be kept secret.
>
> Neither house shall, without the consent of the other, adjourn for more than three days.

The twenty-second section was adopted.

The Chairman read the next section, as follows:

> Sec. 23. For any speech or debate in either house of the legislature the member shall not be questioned in any other place.

Mr. HASCALL. There are two sections in the Illinois constitution —we have adopted section ten. We make the two conform. Section ten of the Illinois constitution reads:

> "Sec. 10. The doors of each house and of committees of the whole, shall be kept open, except in such cases as, in the opinion of the house, requires secrecy. Neither house shall, without the consent of the other, adjourn for more than two days, or to any other place than that in which the two houses shall be sitting. Each house shall keep a journal of its proceedings, which shall be published. In the senate at the request of two members, and in the house at the request of five members, the yeas and nays shall be taken on any question, and entered upon the journal. Any two members of either house shall have liberty to dissent from and protest, in respectful language, against any act or resolution which they think injurious to the public or to any individual, and have the reasons of their dissent entered upon the journals."

I was about rising when the chair was putting the question of the adoption of the last section, to make this suggestion, but if it is thought advisable to consolidate that one and section twenty-three now before us, then gentlemen might let this stand as a substitute for them.

Mr. STRICKLAND. I notice almost all constitutions and deliberative bodies have this as a rule Now, what would a gentleman want to say in a legislative body that he would not like to have repeated elsewhere? If he claims the shelter, by way of privilege, of a legislative body, to belie and slander a citizen, should not he be called to account? Suppose he stand up in his place, exercising the right and the shelter of the legislative hall, and should say a scandalous, libelous thing against someone, ought not he to answer for it? What protection does a member of congress want, or a member of a deliberative body, and what right has he to say anything not right or respectful? Now, it seems to me this thing should be stricken out; because a man should never say an unjust, or improper thing. If he has said it he is responsible to all the world. Now, then let us look at it. "For any speech or debate in either house of the legislature the members shall not be questioned in any other place." Now, why not? If my friend Gen'l. Estabrook should be sent down here to represent Douglas county and should prove to be corrupt; he comes back to the county and shall I not have the right to question him as to his action here? I have often looked at this provision and thought it very foolish. I would like to put this question to Gen'l. Estabrook; what would you, as a gentleman, say in a deliberative body that you would not say out side of it? A man has no right to lie or say a slanderous thing about another member of a legislative body. No sir, no gentle man would do it. Why don't you say that when a lawyer rises to address the court, he shall be protected in anything he may say against the witness or prisoner. A lawyer, in prosecuting a case is often compelled to say things against a prisoner which he don't want to say. I am in favor of striking it out of our constitution.

Mr. MYERS. Mr. Chairman. I supposed that there were good and sufficient reasons why this clause has been adopted and incorporated into so many of the constitutions of the different states. It is found in quite a number of them. My reasons for putting it in here are. I thought no person should be questioned as to any speech he may make here. For instance, there are some cases where members of the legislature have been assaulted for words spoken in debate—wrongfully, unjustly assaulted, for no words can justify a blow. The speaker of a deliberative body, if he knew his duty, would restrain a member from assaulting the character of a private individual. I say that the observations of my friend from Douglas (Mr. Strickland) do not apply to this case. It has been adopted in other constitutions to prevent breaches of the peace. I am able to take care of myself here and elsewhere as respects this matter of questioning my proceedings here. I am willing to answer all questions put by any gentleman, but I don't want to be placed at the mercy of every individual who may see fit to object to my action.

Mr. ROBINSON. Mr. Chairman. It will be as well, perhaps to inquire what would be the effect if this section were stricken out. I think the object of the gentleman from Douglas (Mr. Strickland) in moving to have this struck out is to leave a member of the legislature to the ordinary rules of law for words spoken.

Now it often occurs that a legislator is compelled to speak against individuals. I think he should not be held answerable to any person, or to be questioned in any manner whatever. Certainly the meaning of this section is not that he should not answer the questions of his constituents as to his conduct here, but the question is as to whether a member of the legislature is to be held answerable and at the mercy of the private individuals who may object to his official action.

Mr. ESTABROOK. Mr. Chairman. I was laughing while my honorable colleague, the president of this convention (Mr. Strickland) was making his speech, at the idea that this body would deliberate upon this point, when what is to prevent a man from going up to him and saying, "See here Strick, why did you vote so and so?" Or do you think it possible to prevent men from making political capital out of a man's official actions as a member of the legislature, and talking about and making use of them during a political campaign? Do you not think that under such circumstances a man would often be questioned as to why he did so and so? The clause does not relate to anything of this kind, it means that a man cannot be tried in a legal tribunal for his actions here, that is all. I regret that this debate should go upon our records. I think that no lawyer can question that it means, simply, members of a legislature cannot be made responsible in a court on account of what he has said in his place in the legislature.

Mr. STRICKLAND. Mr. Chairman. I did not know that this thing was going to rise to such magnificent proportions, but I think this has been handed down from a long time ago. I think it is time it was disposed of. Now I submit that the words "they shall not be questioned" —everybody who knows anything about the matter, knows that this expression originated in old Roman times—in days when old Roman senators stood up in their places, and spoke out against individuals, but that does not comport with the spirit of this age. Those brave old Romans were followed by a race of less brave men who protected themselves against possible harm by passing such a provision as this, but it does not comport to the spirit and courage of this age.

Mr. ROBINSON. Would you make the district attorney liable for a false accusation?

Mr. STRICKLAND. Yes, sir. I take the declarations of the grand jury and then, sir, I choose my words so as not to say that a man is a scoundrel or thief or anything of that sort. I say that every man should see well to it what he says against his neighbor; not to say that he can take it back and say he was in the heat of passion. I don't believe in it. My colleague (Mr. Myers) says it is to prevent him from being assaulted. Is there not protection enough against that, if one man assaults another is there not a criminal code by which he can be punished? And would not the community say he ought to be punished. Now, I say that this section has come down to us from a period when men from their cowardice feared to come out and face the public in what they said and did. It was made for the protection of cowards. Why, if a man will be mean enough to take the thirty pieces of silver to betray his neighbor or country he ought to be questioned, he ought to be criticised until he is ashamed of himself—he ought to crawl into his hole and drag the hole in after him. Now, in conclusion, let me ask, what right has a man to stand up here and say that a man, although he is a governor impeached, to say that he is a thief? No man has a right in any deliberative body to say anything but what he will stand by out of it, and he ought to be made to stand by it.

and accountable for it. When they attempt to make a declaration they ought to have authority to know that it is right that they should make it and whenever done let them stand out from under the rules of this body and stand by what they say. Nobody but a coward would skulk behind such a rule. I have looked at this thing a good many years and for the life of me I can see no reason why a man because he is a legislator or congressman should have any privileges in this respect above other men. I am in favor Mr. Chairman, of striking this out entirely. When will a legislative body appear in the state of Nebraska, where every man has a right to express his opinion whether good or bad, right or wrong, in which any man will say that which he will be able to stand to anywhere? I hope never sir. What would my friend here (Mr. Estabrook) ever desire to utter in a legislative body that he would not be willing to stand by and face the world on.

The CHAIRMAN. The question is on striking out the section.

The committee divided and the motion was agreed to.

Mr. ESTABROOK. Mr. Chairman. I move, as a substitute for the section just struck out the following:

"No member of the legislature shall be liable in any civil action or criminal prosecution whatever for words spoken in debate."

The substitute was adopted.

Mr. MYERS. Mr. Chairman. I move the committee rise, report progress and ask leave to sit again at 2 o'clock this afternoon.

The motion was agreed to.

Mr. SCOFIELD. . Mr. President. The committee of the whole have had under consideration the legislative article, and have instructed me to report progress and ask leave to sit again at 2 o'clock this afternoon.

Mr. GRIGGS. Mr. President. I move to adjourn until 2 o'clock.

The motion was agreed to.

So the convention (at twelve o'clock and thirteen minutes) adjourned.

Afternoon Session.

The convention met at two o'clock and was called to order by the president.

Committee of the Whole.

Mr. BOYD. Mr. President. I move that the convention resolve itself into the committee of the whole for the consideration of the legislative article.

The motion was agreed to.

So the convention resolved itself into committee of the whole, Mr. Scofield in the chair.

Legislative Article.

Mr. KILBURN. I move the adoption of the following section:

Sec. 24. Senators and representatives shall be chosen by districts of convenient contiguous territory, as compact as may be defined by law, except as to the first election, which is herein provided for, and every county entitled to two or more senators, or two or more representatives, shall be divided into districts, so that each senator, and each representative shall be voted for and elected, in single districts.

Mr. BALLARD. Mr. Chairman. I

hope that this proposition, or one of like character will pass this convention. I am in favor of the single district system. I favor it for many reasons. I will state as one important reason why I favor it. Take the large district system, in that you find many politicians who run the country politically. Take the small districts and the people can help themselves, they can select such gentlemen as they wish to serve them, and the people are better acquainted with the gentlemen they send than in large districts.

Mr. TOWLE. Mr. Chairman. I call for a division of the question. There are two distinct propositions.

Mr. HASCALL. Mr. Chairman. Voting down this question will not jeopardise the passing of another.

Mr. VIFQUAIN. I call a point of order, a division was called for.

Mr. HASCALL. I claim I am in order. I hope a vote will be taken square upon the section, and if it should be voted down, hereafter if members desire to insert the forepart of the section as an independent section they would be at liberty to do so. I have heard members of this convention express themselves favorably in favor of a single district system. The principle is correct, it brings representation directly home to the people. It might be more agreeable to myself and perhaps to some of my friends, at the present time to have this whole county system continue a few years, still it is not the question, we are framing a constitution for the state of Nebraska and it is intended to remain in force for a long series of years, and if we act wisely and properly in respect to provisions like this the people will undoubtedly be satisfied with it. If you form single districts and elect representatives from those districts, it gives each locality in the state a right to be represented and, as I said before, it brings representation directly home to the people, to their very doors; and, it is much better, as a system, to elect by counties than a system to elect by the whole state. I am satisfied that if we should elect all the members of the legislature by the state at large, it would be scouted as anti-democratic, and contrary to republican institutions; I have no doubt but members would say at once, it was wrong in principle, it was not representation brought home to the people,that small communities would be without representation. What is the difference in principle, if instead of electing all the members of the legislature by the state at large, we should divide the state into elective districts, and elect one-half in one district and one-half in the other, the only difference in favor of the district system would be that you would approach nearer to the proposition now introduced here for your consideration. Then we still advance and get in favor of a better system, this system of electing by counties would be better than electing by districts in the manner just indicated. But it is a better system still, better than any proposed, that is instead of electing representatives and senators by the electors of the county at large, that where a county is entitled to two or more representatives, that we shall district that county for the purpose of electing these senators and representatives from single districts. Gentlemen may urge its impracticability. I do not think there is a representative in this body that is not able to give the population of the various precincts and wards embraced within the limits of the county from which he comes, if it is a county of small population of course there is no necessity for dividing. We will make an entire county a representative district, or if it has population sufficient for a senator we will not divide it; but in case a county has a population to entitle it to five or six members of the house there is no impropriety in grouping the various election precincts in the county into representative districts and elect representatives direct from these districts. Neither is there any objection if a county is entitled to more than two in the other branch of the legislature that we should form districts in the same manner. I shall always believe the convention has made a great mistake unless they adopt this system at this time. We have now reached the stage in our state affairs, in the state of our national prosperity in which we should begin to see things in a right manner. I must say this, that wherever this single district system has been tried it has met with satisfaction. No community or state has ever gone back to the old system after having tried this one. Some gentlemen may be able to instance some.

Mr. WEAVER. I move to amend the section so that it shall apply only to representatives. Strike out the word "senator" wherever it occurs.

Mr. KILBURN. I accept the amendment.

The committee divided and the motion was agreed to.

The Chairman read the next section, as follows:

Sec. 24. The legislature shall provide by law that all stationery required for the use of the state, and all printing authorized and required by them, to be done for their use or for the state, shall be let by contract to the lowest bidder; but the legislature may establish a maximum price.

No member of the legislature, or other state officer, shall be interested, directly or indirectly, in any such contract.

Mr. BOYD. Mr. Chairman. I have a substitute I wish to offer for the whole section. It is as follows:

"Sec.——. The legislature shall provide by law, that the fuel, stationery, and printing paper furnished for the state; the copying, printing, binding and distributing the laws and journals, and all other printing ordered by the legislature, shall be let by contract to the lowest responsible bidder; but the legislature shall fix a maximum price; and no member thereof, or other. officer of the state shall be interested, directly or indirectly in such contract. But all contracts shall be subject to the approval of the governor, and if he disapproves the same there shall be a re-letting of the contract in such manner as shall be prescribed by law."

Mr. HASCALL I would ask the gentleman to include that the printing shall be done in the state. I am in favor of the printing being done in the state, if the costs are a little more.

Mr. BOYD. I will make that addition.

Mr. MOORE. I wish merely to remark that the committee on printing and binding has this same subject under consideration, and I think it would be well to pass this by. It is not in its appropriate place. It is cutting off the committee who have spent considerable time in considering this subject.

Mr. CAMPBELL. That report has been made and it provides exactly as this, only that it, does not say the printing shall be done in the state.

Mr. PHILPOTT. I move that section twenty-four be stricken out.

The motion was agreed to.

The chairman read the next section, as follows:

Sec. 25. The mode of organizing the house of representatives at the commencement of each regular session, shall be prescribed by law.

The twenty-fifth section was adopted.

The Chairman read the next section, as follows:

Sec. 26. Each bill and concurrent resolution shall be read at large on three different days in each house, and the bill, and all amendments thereto, shall be printed before the vote is taken on the final passage.

The presiding officer of each house shall sign, in the presence of the house over which he presides, while the same is in session and capable of transacting business, all bills and concurrent resolutions passed by the legislature.

The twenty-sixth section was adopted.

The Chairman read the next section, as follows:

Sec. 27. The legislature shall have no power to release or relinquish, in whole or in part, the indebtedness, liability or obligation of any corporation or individual to this state, or to any municipal corporation therein.

The twenty-seventh section was adopted.

The Chairman read the next section, as follows:

Sec. 28. Any person holding office under or by virtue of the laws of this state who, except in payment of his salary, fees or perquisites, receives, or consents to receive directly, or indirectly, anything whatever of value, or of personal advantage, or the promise thereof, for performing or omitting to perform, any official act, or with the express or implied understanding that his official action or inaction is to be in some manner or degree influenced thereby, shall be deemed guilty of a felony, and on conviction shall be punished as the legislature may provide.

The twenty-eighth section was adopted.

The Chairman read the next section, as follows:

Sec. 29. Any person or persons offering a bribe, if the same shall be accepted, shall not be liable to civil or criminal prosecution therefor.

But any person who offers or promises such a bribe, if the same shall be rejected by the officer to whom it is tendered, shall be deemed guilty of an attempt to bribe, which is hereby declared to be a felony, and on conviction shall be punished as provided by this article.

The twenty-ninth section was adopted.

The Chairman read the next section, as follows:

Sec. 30. Any person charged with receiving a bribe, or with offering or promising a bribe that is rejected, shall be permitted to testify in his own behalf in any civil or criminal prosecution therefor.

The thirteenth section was adopted.

The Chairman read the next section, as follows:

Sec. 31. Members of the legislature shall, in all cases except treason, felony or breach of the peace, be privileged from arrest, nor shall they be subject to any civil process during the session of the legislature nor for fifteen days next before the commencement and after the termination of each session.

Mr. KIRKPATRICK. I desire to amend that section. I see no propriety in retaining this exemption from civil process for a fixed time prior and after the meeting of the legislature. I move to strike out all after the word "legislature" in the third line.

The committee divided, and the motion was not agreed to.

Mr. MOORE. Mr. Chairman. I move to change "fifteen" to "five."

The committee divided and the motion was not agreed to.

The thirty-first section was adopted,

The Chairman read the next section, as follows:

Sec. 32. The legislature shall not have power to enact laws annulling the contract of marriage in any case where by law the courts of the state are or hereafter may be empowered to decree a divorce.

Mr. BOYD. Mr. Chairman. I move to strike out Sec. 32, and substitute the following. It is from the Illinois constitution:

"The general assembly shall not pass local or special laws in any of the following enumerated cases, that is to say for—

Granting divorces;

Changing the name of persons or places;

Laying out, opening, altering and working roads or highways;

Vacating roads, town plats, streets, alleys and public grounds;

Locating or changing county seats;

Regulating county and township affairs;

Regulating the practice in courts of justice;

Regulating the jurisdiction and duties of justices of the peace, police magistrates, and constables;

Providing for change of venue in civil and criminal cases;

Incorporating cities, towns, or villages, or changing or amending the charter of any town, city or village.

Summoning and impaneling grand or petit juries;

Providing for the management of common schools;

Regulating the rate of interest on money;

The opening and conducting of any election, or designating the place of voting;

The sale under mortgage of real estate belonging to minors or others under disability;

The protection of game or fish.

Chartering or licensing ferries or toll bridges;

Remitting fines, penalties or forfeitures;

Creating, increasing, or decreasing fees, percentage or allowances of public officers, during the term for which said officers are elected or appointed;

Changing the law of descent;

Granting to any corporation, association or individual the right to lay down railroad tracks, or amending existing charters for such purposes;

Granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever;

In all other cases where a general law can be made applicable, no special law shall be enacted.

Mr. HASCALL. Mr. Chairman. I move to strike out that portion relating to elections. It might happen that a case would arise where it was necessary to have a special election.

Mr. BOYD. I accept the amendment, Mr. Chairman.

Mr. MYERS. Mr. Chairman. I, for one, am opposed to this extract from the Illinois constitution. The legislature is convened to look after the interests of the people. The altering of names of streets and the names of individuals is an important matter. An individual may have his name changed in the district in which he resides, and as the matter would not be likely to be known outside of that district, he could go to other parts of the state, he could commit fraud, under his new name. The names of streets may be required to be changed. It is often the case that names of streets have been changed in consequence of the persons after whom they were named, becoming odious. For instance, the names of many streets in the towns of Pennsylvania were named after individuals—prominent men, who afterwards became rebels. Of course the people would have the names of such streets changed. I have examined that provision in the Illinois constitution and I for one cannot consent to adopt it.

The CHAIRMAN. The question is upon the adoption of the section.

Mr. THOMAS. Mr. Chairman. I move to insert that portion relating to elections, which Mr. Boyd struck out at the suggestion of the gentleman from Douglas (Mr. Hascall.)

The CHAIRMAN. The question is upon the motion to re-insert that portion of the section relating to elections, which was stricken out.

Mr. HASCALL. Mr. Chairman. This is one matter which should be left to the legislature. It may be necessary in the course of legislation to provide that, the people should be heard upon a certain question. Or a county might fail to get properly organized, and it might be necessary for the legislature to order a special election in that county. That is "special legislation," and yet it is a wholesome provision. I am as much in favor of prohibiting special legislation, perhaps, as any member upon this floor; but there may be good reasons why we should not go to the extent this amendment would carry us. It is not for questions that would take up the time of the legislature to no purpose, that we would make this provision. For instance, the changing of the names of persons; that can be done by a general law requiring application to be made to the county court.

Mr. SPRAGUE. This only relates to the opening and conducting of the voting.

Mr. HASCALL. Well then, I see no objection to that. It was a misapprehension of mine not having a printed copy before me.

The CHAIRMAN. The motion before the committee is to re-insert.

The motion was agreed to.

The CHAIRMAN. The question is on the adoption of the section as amended.

The section was adopted.

Mr. NEWSOM. Mr. Chairman. I have a section which I desire to offer just here.

The Chairman read the section, as follows:

"No person elected to the legislature shall secure any civil appointment within this state from the governor, the governor and the senate, or from the legislature, during the term for which he shall have been elected; and all such appointments and all votes given for any such member, for any such office, or appointment, shall be void; nor shall any member of the legislature or other officer of the state be interested either directly or indirectly in any contract with the state, or any county thereof authorized by any law passed during the term for which he shall have been elected, or within one year after the expiration thereof."

Mr. HASCALL. Mr. Chairman. I will offer a substitute, which will be section 13 of the old constitution; it reads as follows:

"No member of the legislature shall, during the term for which he was elected, be appointed or elected to any civil office in the state which shall have been created or the emoluments of which have been increased during the term for which he was elected."

Mr. STRICKLAND. Mr. Chairman. I am opposed to that proposition, because it assumes that every person elected to the legislature is a rascal. Suppose a vacancy should occur in some office and in looking around for some one to fill it, it should be found that a certain member of the legislature was just the man and the people's choice; are you going to say that because he is a legislator he is disqualified? What is it in the election of a member of the legislature that shall prohibit him from taking a contract from the state, do you suppose your legislature is going to be weak enough to allow a rascal to impose on them, and if he is an honest man why not give him the contract for building the penitentiary or any other building? Now, sir, if there can be any good, honest reason why the members of the legislature should not occupy any position in the state as well as any other man I would like to hear the reason. I don't believe it sir. You might just as well say that no man sitting here shall hold any office under this constitution.

Mr. NEWSOM. Mr. Chairman. If the legislators of our own state and of other states were exempt from these charges, then the argument of the gentleman would be good. If he was blind and could not see these things occuring around him every day, or lived in an age where there was no rascality then perhaps he would be right in speaking as he does. This is no check upon honest men, but it is only to prevent corruption. What objection can the gentleman have to placing a bar to any man who may come here to take a place in the legislature from taking a contract under that legislation? Now, sir, I don't see that it will affect an honest and upright man, and if not what effect has the gentleman's argument. I think that the gentleman's (Mr. Hascall's) substitute is a good one so far as it goes, but it does not prevent corruption.

Mr. MASON. Mr. Chairman. We are challenged to offer some reason for this proposed proposition. Let us see what the proposition is:

"No person elected to the legislature shall receive any civil appointment within this state from the governor, the governor and the senate or from the legislature during the term for which he shall have been elected."

That is the first. Now, sir, is there any good reason for that? Let us see. Suppose there shall be; as has been alleged there has been in the past, derelictions of duty owing to some extent to the executive appointments. Why, sir, the gentleman has learned truth beyond that contained in Holy Writ. He says we should not deliver men from temptation, but set it before them. This does not assume sir, that the legislature is dishonest, but simply carries out the best portion of the Lord's prayer, "deliver us from temptation," and will leave the gentleman, not to attack the mover of this proposition, but to walk up and attack the Lord's prayer. Now what is the second proposition?

"Nor shall any member of the legislature or other officer of the state be interested, either directly or indirectly in any contract with the state or any county thereof authorized by any law passed during the term of which he was a member."

Now, sir, it is within my memory and within my experience that this is a most important proposition. I know sir, that a gentleman sat as a member of the legislative body, and during that session one section of land was appropriated to build a bridge across the Blue river in Saline county. I know that land was advertized for sale and before the day of sale came it was conveyed to this member of the legislature who was a contractor for that bridge, and the land deeded to him; it was only set aside through the prompt action of a grand jury of a county. Now, sir, how came that about? Why sir, in my judgment at the very time that legislation was had a contract was entered into to build a bridge. As another instance I might challenge the attention of the gentleman to a bridge in which this state has a quarter section of land invested today, and $1,500 has been expended on it already to make it stand this long, and it is ready to fall down. Now sir, I deal with facts as they exist, I deal with human nature as it is, and I legislate with a view to meet the wants of society as I find them. When a gentleman stands up and clothes these legislators with immaculate purity of purpose that does not characterize them, he is disputing the facts of history in this state at least. Now, sir, is it right that a legislator should first take money from the treasury of the state to carry on a contract, and then be a sharer in the profits of that contract? Is not it tempting men to wrong? Is it not opening a door and inviting them to come and partake of the feast of public plunder? and is this no reason for this legislation? Mr.

Chairman, and gentlemen of the committee, there are two simple propositions here and but two; first, "no member of the legislature shall be a party to, or interested in any contract between the state and any other person, or between any county and any other person while he is a member of the legislature, during the period for which he is elected." Why? Why, sir, the state of Nebraska has aided no less than four counties to build their bridges, would not it be well if the members who come from their respective counties should not be interested in a contract of their erection? Would not it make them more watchful guardians of the public interest if this was a fact? It seems to me it would, and this thing of impugning anybody is all bosh, all bosh and twaddle. We have to meet human nature as it is. Besides, sir, the gentleman says we are making a constitution for ourselves; now I supposed, sir, we were making one for the people of the whole state, for the children of the state, for the women of the state, the born and those that are to be born. I did not imagine sir, that we were making a constitution simply for ourselves; and sir, I would provide that legislators should receive every inducement to legislate for the whole people and not for themselves. This then sir, is all of the propositions offered by my colleague (Mr. Newsom.) I call the attention of the committee especially to this proposition, it is covered with considerable verbiage, there are but two simple propositions in it and I might challenge the attention of the committee to each of them. "No person elected to the legislature shall receive any civil appointment within this state from the governor and the senate or from the legislature during the term for which he shall have been elected, and any such office or appointment shall be void, nor shall any member of the legislature or other officer of the state be interested, either directly or indirectly in any contract with the state or any county thereof, authorized by any law passed during the term for which he shall have been elected or within one year after the expiration of the term of his office." Now, sir, I regard that the latter part of that clause is a great improvement on our old constitution. I am willing, sir, to confine the first clause to the terms in the old constitution, "that he shall not be appointed to fill any office which has been created during the term to which he was elected, and for one year thereafter." Why, if it does no good, who is hurt by it? If he is not going to make some money out of a contract, is any injury done any individual? I think not. Now, sir, I am not particular whether this precise language is held or not; I desire to point out clearly the distinction between the amended proposition and the old one. "No member of the legislature during the term for which he was elected shall be appointed or elected to any civil office in the state which shall have been created, or the emoluments of which shall have been placed during the term for which he was elected." I like that as far as it goes and at the proper time shall move to add the last clause to the proposition moved by the gentleman from Otoe: "Nor shall any member of the legislature or any other officer of the state, be interested, either directly or indirectly in any contract with the state or any county thereof, authorized by any law passed during the term for which he shall have been elected, or within one year after the expiration thereof." Add that, sir, to the section in the old constitution, and in my judgment you have removed the legislator from temptation and have secured the interest of the people. Why, sir, is not human nature the same today as in times past? We are all human, it is all idle to say we are not. Would not a few dollars or a thousand, or a hundred thousand bias a man's judgment, however honest he might be? If he was to share in the profits of a contract, in respect to which he was voting appropriations, might it not influence his judgment? Would not he vote the appropriation for a contract today and take it tomorrow and revel in the spoils of public plunder from the purpose for which he enacted the law? It is not sir, that I have not as much faith in human integrity as the gentleman. I believe I have, but sir, I must look at humanity as it is and I move you Mr. Chairman, as an amendment to the proposition moved by the gentleman from Douglas (Mr. Hascall) to add to the thirteenth section of the old constitution the words suggested in the last clause of the amendment moved by the gentleman from Otoe (Mr. Newsom) which is; "nor shall any member of the legislature or other officer of the state be interested, either directly or indirectly in any contract with the state or any county thereof, authorized by any law passed during the term for which he shall have been elected, or within one year after the expiration thereof." I like that "other officer." Would you have an officer interested in any contract when he is called upon to audit the accounts? Would you have an officer interested in a contract when he is authorized to let that contract? Why, sir, what was the theme, what was the proof that condemned the late governor in the intelligent judgment of the public? It was that contract for $5,000 with Silver; it showed an interest in the contract on the part of the governor, and I undertake to say it was the only thing that struck the public mind with abhorrence, and I would say in the constitution that no officer should be interested in any contract with the state, either directly or indirectly. I would say it sir, because it removes officers from temptation. I would say it because it is right. I would say it because it stands approved by the highest sentiments of christianity; I would say it sir, because it stands approved by the highest standard- of legislative intelligence. Why should not you say it? Why, simply he says, because it reflects on somebody. No, sir, it recognizes the fact that is uttered in words that breathe a portion on every page of holy writ, the fallibility of poor, weak humanity. It accuses no one, but it lifts them and moves them from temptation, that is all. And is not it right? What would you say Mr. Chairman, to a gentleman that went forth to transact your business, who should hold an interest in a private contract, for which your money paid the expense? What would be the decree of a court of chancery in respect to such a contract? Brand it with fraud, not in fact, but fraud in law. Now, sir, I undertake to say that if an officer of the government is interested in a contract, it may not be fraud in fact, but it is fraud in law. I undertake to say if my agent appointed to superintend the expenditure of my money, if he is interested in a contract, it is a fraud in fact although he may be never so honest in his intentions, and the chancery law would set aside such contract because it is wrong act and fraud in law. Mr. Chairman, these being my views I move to add to the proposition moved by the gentleman from Douglas, the last words of the proposition made by the gentleman from Otoe. Take the old section and add this to it, and it seems to me nobody can be harmed, and great good may be done.

Mr. HASCALL. I wish merely to state the question in its proper shape. It is in two parts, and if the gentleman will adopt this suggestion——

Mr. NEWSOM. I accept it.

Mr. MASON. I desire to add another word, and another amendment. Men who are handling the state funds today, the state money which is in their hands, I am informed upon reliable authority, use that fund to buy warrants at fifteen per cent. discount. The warrants are registered; they know when the money will be paid; they buy the warrants when first due; the state officers, those who hold office, and then they draw their money and make their fifteen per cent. I want to cut this evil up by the roots, and to make it a penitentiary offense to do this thing.

Mr. ABBOTT. I desire to know who they are.

Mr. MASON. I will inform you.

Mr. STRICKLAND. It is a good while since I learned "The Lord's Prayer." While the gentleman says "deliver us from temptation," I will say "deliver us from evil." Branding the entire legislature of the state of Nebraska as unworthy of any trust of honor! It does substantially brand every man as infamous! It is a standing insult to every man who aspires to the position of serving his constituency in the legislature. Now, Mr. Chairman, strong words and argument can sometimes obtain great results. Let us suppose a legislative body in session, and suppose that by the law, a U. S. Senator is to be elected. Perhaps Judge Lake or Gen. Estabrook, might be willing to come here and serve as legislators. Death, resignation or some other cause had made a vacancy, and why could not three-fourths or a majority of that body take the nomination for that place? He has accepted the position, honestly serving his constituents, as a member of the legislature, and why should he be branded with infamy and debarred the opportunity of an election to a higher position?

Mr. MAXWELL. Is there anything in our constitution to prevent any member of our legislature occupying a position as U. S. Senator?

Mr. STRICKLAND. You ask me as a lawyer: I answer you as a "tanner"—I don't think it would. (Laughter.) The man holding the argument of the chief justice would say to the man elected, "You, sir, simply an elector and a citizen, have violated the laws of Nebraska and each one voting for you have done the same." Why, sir, suppose a good, honest treasurer dies, a safe keeper of the funds of the state government; the legislature, if it was in their power and it was by election; see a gentleman in the legislature who is well qualified for the position. The whole state says of him, he is a good, capable, honest man; he can give the necessary bonds, and be would make a good officer. No, sir, the proposition of the gentleman says he is branded as infamous because he is a member of the legislature, and consequently cannot hold the position. Suppose one of the professors of the University resigns, and the Chancellor appoints a man sitting here, can he accept it? No, he has learning and ability, and yet he cannot hold the position. My friend says he speaks for poor, weak, suffering humanity, I am not one of those who believes in the doctrine of total depravity. Here is one general argument. Why, there is so much more good in man than evil. Look at the ministers of the gospel, see the spires of our beautiful churches pointing heavenward; and see how many are preaching the gospel of Christ; and the world is moving on, getting better every day, and has been for 1,800 years. We could not have the liberty we have: education, and the security of personal rights if it were not that the great streak in mortal man was goodness, tempered only occasionaly with meanness. There have appeared in the legislative bodies of this state men who have sold out the interests and rights of their constituents for dollars and cents. But where are they today? They never made their appearance a second time, and I never knew a constituency that did not punish a representative when he came home with the smell of corruption on his garments. Is my friend the chief justice so weak that he gives way? I say that bribery, corruption and crime, and what they call corruption are the exception and not the rule. Why, sir, if a man lived a thousand miles out in this state, and was to pick up this article, he would blush for shame that the state of Nebraska sent out such an article as branded her legislators with crime. I have always held in reverence and esteem the man who could work his way honorably; and it is a high and solemn position to come here, either to make an organic law or laws for the sovereign of the state. And withered be the man's right arm, and blackened be his heart, or damned his soul that would sell his vote or corrupt his opinions. My experience of five years in the legislature of Nebraska has proved to me that the man who does that is the exception. I beg of you, as honorable men, do not class the legislature which is to come here, a band of thieves and corruptionists. Assume in your organic law that they are honorable men. Make your criminal law strong enough to punish crime. But let the word "honorable" stand before the names of those who do honorably. Now, sir, lastly and forever I protest against this insult to the whole state.

Mr. THOMAS. I merely wish to call the attention of the convention to the difference between our present constitution and that of Illinois. I am sorry the gentleman from Otoe accepted the amendment. It seems to me that section fifteen of the constitution of Illinois is exactly what we want; and that section thirteen of Nebraska is not sufficiently far-reaching. Section thirteen reads: "No member of the legislature shall during the term for which he is elected be appointed or elected to any civil office in the state which shall have been created, etc." Now, it seems, according to that, that no person shall be elected to any office that has been created. I think that section 15 of the Illinois constitution reaches this point. I will read it:

Sec. 15. No person elected to the general assembly shall receive any civil appointment within this state from the governor, the governor and senate, or from the general assembly, during the term for which he shall have been elected; and all such appointments, and all votes given for any such member, for any such office or appointment, shall be void; nor shall any member of the general assembly be interested, either directly or indirectly, in any contract with the state, or any county thereof, authorized by any law passed during the term for which he shall have been elected, or within one year after the expiration thereof.

Now, it seems to me this section against corruption on the part of the governor and the members of the legislature, (I would insert "legislature" for general assembly.") I would much prefer the section of the Illinois constitution. I hope this convention will adopt this whole section. In regard to the question whether this section is inserted or not, I would say that I have had but very little experience in legislative matters in this state or territory, but my experience leads me to declare that so much of the provision as is absolutely necessary to keep corruption out of the legislature should be used. It has been admitted here that members of the legislature had been actually bribed. If this is the case, is it not necessary to have such a provision? Can the provision possibly do any harm? If the members of the legislature are honest it can certainly do no harm. Why is it an imputation upon the members of the legislature? If it is, then an imputation has been cast upon every legislature in the union, and if it is necessary that it should go in, this provision of the Illinois constitution is as good as can be provided.

Mr. MASON. Mr. Chairman. I desire to say but a single word, and that is, my colleague, Mr. Newsom, withdrew his provision. Mr. Hascall has withdrawn his, and I withdraw mine in favor of the Illinois section as just read by the gentleman from Nemaha (Mr. Thomas.)

Mr. MYERS. I think, Mr. Chairman, that the provision which was reported by the committee would be sufficient to give the people of this state honest legislators, but as there are other branches of fraud and corruption existing, I have no objection to the new amendment. I don't endorse the principle of universal depravity; I believe there are some redeeming traits and qualities in the human character. We see, to a considerable extent, the dark side of human nature, but we also see gleams of honesty in the legislature. I saw here, last winter that public money was not only used for the demoralization of members of the legislature, but bribed newspapers and subsidized editors presented their horrid features upon the floor of this hall with the public money in their pockets attempting to influence members against doing their duty to the state—attempting to overthrow the administration of justice, with the money in their possession to do it with. I am here for the purpose of closing the door forever and ever against this kind of proceedings. I believe it can be done. I know myself of several members of the legislature who voted against the administration of justice last winter, who were bribed with the state funds to do this, and I have felt the power of bribes myself. Now it seems to me these things should be stopped, for the sake of the reputation of our young state. Now, Mr. Chairman, I don't want to make a speech. It is not my forte. My forte is behind the plow, but yet as I reside in Nebraska, I have an interest in the public affairs of this state. I have some words here which I will read:

"The bribed apostate! blot his hateful name
From each and every scroll or honost fame;
Let no man trust him—none forbear to shed
Contempt and deep dishonor on his head:
Let scorn still point her finger and her jibe
And say—behold the consequence of bribes!
Let guileless children as they pass by,
Shrink from his touch and shudder at his eye,
Let lovely woman loathe him with disgust
And shun him like the reptile in the dust;
And whilst he lies, let infamy alone
Claim the bribed legislator as his own,
Until he dies and sinks into the grave
To poison worms that feed upon the knave,
There midst the storms, let hideous furies foul
Hold mighty revel and in concert howl:
Let hissing serpents make that spot their home,
And be the watchful guardian of his tomb."

That is the vote of the briber and the man who injures his constituents.

The CHAIRMAN. The question is upon the adoption of section 15 of the Illinois constitution, as follows:

Sec. 15. No person elected to the legislature shall receive any civil appointment within this state from the governor, the governor and senate, or from the general assembly, during the term for which he shall have been elected; and all such appointments, and all votes given for any such members for any such office or appointment, shall be void; nor shall any member of the general assembly be interested, either directly or indirectly, in any contract with the state or any county thereof, authorized by any law passed during the term for which he shall have been elected, or within one year after the expiration thereof.

Mr. MASON. Mr. Chairman. I move to amend by inserting after the word "legislature" the words "or any state officer."

Mr. ABBOTT. Mr. Chairman. I desire to say, before this vote is taken, that Judge Mason in his remarks did not intend to refer to any state officer.

Mr. MASON. No sir, I take back what I said. I meant persons in the employment of the state.

The CHAIRMAN. The question is on the amendment of the gentleman from Otoe (Mr. Mason.)

The amendment was agreed to.

Mr. MASON. I move the adoption of the section as amended.

The section was adopted.

The Chairman read the next section, as follows:

Sec. 33. When vacancies occur in either house, the president of the senate or speaker of the house in which the vacancy may occur, shall issue writs of election to fill such vacancies.

Mr. HASCALL. Mr. Chairman. I move to strike out the section and substitute the section of our old constitution.

The CHAIRMAN. I will read the substitute offered by the gentleman from Douglas (Mr. Hascall,) as follows:

"The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature."

The question is on striking out Sec. 33, and substituting that just read.

The motion was agreed to and the substitute was adopted.

The Chairman read the next section, as follows:

Sec. 34. All bills for raising revenue shall originate in the house of representatives, but the senate may propose amendments, as in other bills. No money shall be drawn from the treasury but in consequence of appropriations made by law.

Mr. ABBOTT. I move to strike out section thirty-four, it is provided for in section nineteen.

The motion was agreed to.

The Chairman read the next section, as follows:

Sec. 35. The legislature shall provide by law for the suppression of vice and immorality in this state, and shall never authorize any games of chance, lottery or gift enterprise, under any pretense or for any purpose whatever.

Section thirty-five was adopted.

The chairman read the next section, as follows:

Sec. 36. The legislature shall make no appropriations of money out of the treasury in any private law.

Bills making appropriations for the pay of members and officers of the legislature, and for the salaries of the officers of the government, shall contain no provision on any other subject.

The salary of any officer shall not be increased for any term for which he may have been appointed or elected.

Section thirty-six was adopted.

The Chairman read the next section, as follows:

Sec. 37 No money shall be drawn

from the treasury except in pursuance of an appropriation made by law, and on the presentation of a warrant issued by the auditor thereon; and no money shall be diverted from any appropriation made for any purpose, or taken from any fund whatever, either by joint or separate resolution. The auditor shall, within sixty days after the adjournment of each session of the legislature, prepare and publish a full statement of all money expended at such session, specifying the amount of each item, and to whom and for what paid.

Mr. HASCALL. Mr. Chairman. I move to strike out "an" where it occurs in the first line before "appropriation" and insert "a specific" in place of it.

The amendment was agreed to.

Mr. ABBOTT. Mr. Chairman. I move to strike out the last part of this section relating to the auditor. I hold that it is a species of legislation and ought not to be in the constitution.

Mr. HASCALL. It relates to both.

Mr. ABBOTT. We have in the executive article the duties of the officers and they should not be placed here.

Mr. HASCALL. Mr. Chairman. I hope the motion will not prevail. It relates to the subject matter that precedes and is taken from the constitution of Illinois.

Mr. ABBOTT. I withdraw the amendment.

Section thirty-seven was adopted.

The secretary read the next section, as follows:

Sec. 38. Each legislature shall provide for all the appropriations necessary for the ordinary and contingent expenses of the government until the expiration of the first fiscal quarter after the adjournment of the next regular session, the aggregate amount of which shall not be increased without a vote of two-thirds of the members elected to each house, nor exceed the amount of revenue authorized by law to be raised in such time; and all appropriations, general and special, requiring money to be paid out of the state treasury from the funds belonging to the state, shall end with such fiscal quarter;

Provided, That the state may, to meet casual deficits or failures in revenues, contract debts never to exceed in the aggregate $250,000; and monies thus borrowed shall be applied to the purpose for which they were obtained, or to pay the debt thus created, and to no other purpose; and no other debt except for the purpose of repelling invasion, suppressing insurrection or defending the state in war, (for payment of which the faith of the state shall be pledged) shall be contracted unless the law authorizing the same shall, at a general election, have been submitted to the people, and have received a majority of the votes cast for members of the legislature at such election. The legislature shall provide for the publication of said law for three months, at least, before the vote of the people shall be taken upon the same; and provision shall be made at the time for the payment of the interest annually as it shall accrue, by a tax levied for the purpose, or from other sources of revenue, which law providing for the payment of such interest by such tax shall be irrepealable until such debt be paid. And provided, further, that the law levying the tax shall be submitted to the people with the law authorizing the debt to be contracted.

Mr. MYERS. Mr. Chairman. I move that the words "general and special" be stricken out in fifth line, as we have in the first line made all appropriations specific.

The amendment was agreed to.

Mr. KIRKPATRICK. Mr. Chairman. I move to strike out all after the word "quarter" in the sixth line. It seems hardly appropriate it should appear in this legislative article. It was a special subject referred to the standing committee on state, county and municipal indebtedness and appears in the report of that committee.

Mr. LAKE. Mr. Chairman. It seems to me this is the place where this section should find lodgment in our proposed constitution. It is in the order in which it is treated in the Illinois constitution. With the exception of the words "general assembly" it is I think a verbatim copy of the section in that constitution. It is unquestionably a well considered section. I have looked it over carefully, and unless the sum of $250,000 is too large for this state, I can see no well grounded objection to adopting the section, it can easily be reduced. It seems to me if the great state of Illinois is limited to $250,000 perhaps a less sum might be sufficient for any contingency that might arise within our state, still I do not know that I have any serious objections to this sum. What are the provisions? It is under the head of a proviso, "Provided, That the state may, to meet casual deficits or failures in revenues, contract debts never to exceed in the aggregate $250,000;" It is proper that we should insert somewhere a provision of this kind and there is no place where it can be more suitably done than here. Further "and monies thus borrowed shall be applied to the purpose for which they were obtained, or to pay the debt thus created, and to no other purpose." That is what we all desire. "and no other debt except for the purpose of repelling invasion, suppressing insurrection or defending the state in war (for payment of which the faith of the state shall be pledged) shall be contracted unless the law authorizing the same shall, at a general election, have been submitted to the people, and have received a majority of the votes cast for members of the legislature at such election. The legislature shall provide for the publication of said law for three months, at least before the vote of the people shall be taken upon the same; and provision shall be made at the time for the payment of the interest annually as it shall accrue, by a tax levied for the purpose, or from other sources of revenue, which law providing for the payment of such interest by such tax shall be irrepealable until such debt be paid. And provided, further, that the law levying the tax shall be submitted to the people with the law authorizing the debt to be contracted." That is evidently a very carefully considered section; it has received a deal of attention and the language it is couched in seems to have been well considered by the convention in Illinois, and unless gentlemen can urge some objection to the aggregate debt which the state may contract, under the circumstances I do not think the committee having this subject in charge, can contrive any section better than this. I hope it will be adopted.

Mr. MYERS. Mr. Chairman. It is no more than fair and proper that that gentleman who is chairman of that committee (Mr. Kirkpatrick) should have an expression of the convention on the propositions they have agreed upon. I would therefore suggest to him that he offer his proposition in lieu of this in order to get the sense of the convention upon it.

Mr. KIRKPATRICK. Mr. Chairman. It is a matter in which I have no personal interest except in common with my fellow citizens of the state. The report alluded to is as follows:

"Sec. 1. The credit of the state shall not in any manner be given or loaned to or in aid of any individual, association or corporation whatever; nor shall the state hereafter become a joint owner or stockholder in any company in the state, or elsewhere, formed for any purpose whatever; nor shall the state ever assume the debts of any county, city or town or other municipality, or of any private corporation whatever, unless such debt shall have been created to repel invasion, suppress insurrection or defend the state in war.

Sec. 2. The state may contract debts to supply casual deficits or failures of revenue, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether created by one or more acts of the legislature, or at different periods of time, shall never at any one time exceed the sum of two hundred and fifty thousand dollars, and the monies arising from the creation of such debt shall be applied to the purpose for which it was obtained, or to repay the debt so created, and to no other purpose."

This report gives the state additional power to contract other devises for other purposes. This report we are now considering provides that the state may contract debts to an unlimited amount. It is a matter in which I have no personal pride; but the subject belongs, I suppose, to the committee making this report.

Mr. LAKE. I would say that one objection urged—want of limitation on the part of the legislature to extend its credit to aid any public or other corporation, association or individual is provided for in section forty, the same as section twenty in the Illinois constitution.

The CHAIRMAN. The question is upon striking out. I will read section thirty-nine:

Sec. 39. The legislature shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made, nor authorize the payment of any claim or part thereof, hereafter created against the state, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void. Provided, The legislature may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion.

Mr. ABBOTT. I find that sections 13, 24, 38 and 39 contain similar provisions.

Mr. MYERS. This the committee on revision and adjustment can make uniform.

Mr. MAXWELL. I move these sections be re-committed to the committee with instructions to prepare one section to meet the whole case.

Mr. HASCALL. Oh, let us not do that. Let us strike out section thirteen.

Mr. ABBOTT. I move to strike out section thirty-nine.

The motion was agreed to.

The Chairman read the next section, as follows:

Sec. 40. The state shall never pay, assume or become responsible for debts or liabilities of, or in any manner give, loan or extend its credit to, or in aid of, any public or other corporation, association or individual.

Mr. ROBINSON. I move to strike out the section.

Mr. ABBOTT. I object to their being stricken out unless they are placed somewhere else.

The motion was not agreed to.

The section was adopted.

Mr. MYERS. I move that sections forty-one and forty-two be stricken out, having been provided for by the gentleman from Douglas by his amendment.

Mr. BOYD. Section forty-two is exactly similar to the substitute I offered for section twenty-four.

The Chairman read the next section, as follows:

Sec. 41. The legislature shall provide by law that the fuel, stationery and printing paper furnished for the use of the state, the copying, printing, binding, and distributing the laws and journals, and all other printing ordered by the legislature, shall be let by contract to the lowest responsible bidder; but the legislature shall fix a maximum price and no member thereof, or other officer of the state, shall be interested, directly or indirectly, in such contract. But all such contracts shall be subject to the approval of the governor, and if he disapproves of the same there shall be a re-letting of the contracts in such manner as shall be prescribed by law.

Mr. BOYD. This is exactly similar to the one in the Illinois Constitution.

Mr. MANDERSON. I move to strike out all after and including the word "price," in the fourth line, to and including the word "but" in the fifth line.

Mr. MOORE. I believe there was a motion made to strike out.

Mr. ROBINSON. I would state that the gentleman from Otoe amended his motion so as to cover all this.

Mr. MOORE. I believe Mr. Campbell, from Otoe, is chairman of the committee that has this question under direct consideration and through courtesy to him I think we ought to pass it over, and strike it out of the legislative article. I move that sections forty-one and forty-two be stricken out.

Mr. CAMPBELL. I have no objection to this being in here. It is similar to what our committee have prepared, except that this provides that the printing shall be done in the state.

Mr. MOORE. I include in my motion section forty-one only.

Mr. SPRAGUE. I hope that will not prevail. I think we might add on to this that which the committee on printing have about the printing in this state and dispose of the matter.

The motion of Mr. Moore was not agreed to.

Mr. MANDERSON. I wish to insert in my motion after the word "bidder," the words "reside within the state."

Mr. PHILPOTT. I have a substitute I wish to offer. It is as follows:

"The legislature shall provide by law that the fuel, stationery and printing paper furnished for the use of the state, the copying, printing, binding and distributing of the laws and journals, and all other printing ordered by the legislature, shall be let by contract to the lowest responsible bidder, he being a citizen of the state, but the legislature shall fix a maximum price; and no member thereof or other officer of the state, shall be interested, directly or indirectly in such contract. But such contracts shall be subject to the approval of the governor and if he disapproves of the same there shall be a re-letting of the contract in such manner as shall be prescribed by law."

Mr. MYERS. Mr. Chairman. I would enquire of the gentleman from Lancaster if he provides that the printing be done in the state, whether that would not permit parties outside of the state to contract for it and get the printing and binding done in the state.

Mr. SPRAGUE. Mr. Chairman. I hope this substitute will not be adopted. The report of the legislative committee covers the whole ground.

The CHAIRMAN. The question is upon the adoption of the substitute.

Mr. THOMAS. Mr. Chairman. I move to insert, after the word "but," in the third line the words "the printing and binding shall be done in this state," and to strike out all after the word "price," in the fourth line down to the word "all," in the fifth line.

The CHAIRMAN. The question is upon the adoption of the section as amended.

The section was adopted.

The Chairman read the next section, as follows:

Sec. 42. The state of Nebraska shall never be made defendant in any court of law or equity.

Mr. MAXWELL. Mr. Chairman. I move to strike out section 42.

The motion was agreed to.

The Chairman read the next section, as follows:

Sec. 43. No law shall be passed which shall operate to extend the term of any public officer after his election or appointment.

Mr. McCANN. Mr. Chairman. I move to strike out this section.

The motion was agreed to.

The Chairman read the next section, as follows:

Sec. 44. It shall be the duty of the legislature to pass such laws as may be necessary for the protection of operative miners, by providing for ventilation when the same may be required, and the construction of escapement shafts, or such other appliances as may secure safety in all coal mines, and

Mr. MYERS. Mr. Chairman. The committee on internal improvements have presented to the committee an amendment, which comes in here.

The Chairman read the amendment, as follows:

"And shall enact such laws as may be necessary to facilitate the construction of bridges."

Mr. McCANN. Mr. Chairman. I would like to ask the chairman of the legislative committee, (Mr. Myers) if he thinks this section relating to coal mines will ever apply to this state?

Mr. MYERS. Mr. Chairman. I would reply to the gentleman from Otoe (Mr. McCann) that they are sinking mines in various parts of the state. I think those who work these mines should be protected.

Mr. KIRKPATRICK. Mr. Chairman. The gentleman from Otoe (Mr. McCann) has probably, not heard that a great deal of coal is being discovered along the Blue.

Mr. PRICE. Mr. Chairman. I move to strike out the word "coal" in the third line.

Mr. MASON. Mr. Chairman. The power to do these things is possessed by the legislature just as much without a constitutional——

Mr. ROBINSON. Mr. Chairman. I move to strike out the entire section.

The motion was agreed to and section forty-four was stricken out.

The Chairman read the next section, as follows:

Sec. 45. The legislature shall provide for establishing and opening roads and cartways connected with a public road for private and public use.

Mr. ROBINSON. Mr. Chairman. I move to strike out the section.

The CHAIRMAN. The question is upon the motion to strike out the section.

Mr MASON. Mr. Chairman. I hope the section will be stricken out. I think a provision in our general law meets the whole case.

Mr. HASCALL. I am in favor of that if you strike out the word "private."

Mr. KIRKPATRICK. Have we not a general law providing for this matter.

Mr. MASON. We have a law but notwithstanding that law the legislature at every session has its private acts.

Mr. SPEICE. I would ask if section twenty-two of the Illinois constitution would not cover the whole matter?

Mr. MASON. Yes sir, I will withdraw my motion.

The CHAIRMAN. The question is on the motion to strike out.

The motion was agreed to.

The Chairman read the next section, as follows:

Sec. 46. The legislature may pass laws permitting the owners or occupants of lands to construct drains and ditches for agricultural and sanitary purposes across the lands of others.

Mr. HASCALL. Mr. Chairman. I move to amend by adding to the section the following: "And to condemn land for that purpose, and compensation for the land thus taken to be ascertained and paid as required by law for land taken for railroads."

Mr. TOWLE. Mr. Chairman. I move to strike out the whole section.

Mr. GRAY. Mr. Chairman. I hope this section will not be stricken out but will be amended. The committee on internal improvements have reported an amendment to this section. I will read it:

"And may provide for draining wet or overflowed lands, giving the county commissioners of any county authority to construct ditches and drains for that purpose and levy and collect taxes upon the lands to be benefited by such drainage, to pay the expenses of constructing and keeping in repair such ditches and drains."

Mr. CHAIRMAN. There may be a question whether the legislature would have any power to go to the extent proposed by this amendment if it was not so authorized by the constitution, for it is proposed to make taxes uniform and it may seem to conflict if there was not something here particular and applying to this direct case. Now it must seem to most members of the committee that the provision contained in this section and the amendment is unnecessary, but it is not so. I know of two counties in this state where they have a very great deal of wet land that would be as well as any other for agricultural purposes if properly drained. The people have contemplated draining it but never have been able to do so, nor will be unless the legislature will help them by some such law. I speak of the counties of Burt and Dodge.

Mr. BALLARD. And Washington.

Mr. TOWLE. And Richardson.

Mr. GRAY. That is four counties. It is sufficient to say there is a good deal of such land, and laws must be passed to assist in draining these for they never can do it in any other way. I hope the motion to strike out will not prevail; indeed I will ask my friend to withdraw the motion.

Mr. TOWLE. I will not.

Mr GRAY. Then I will ask the committee to refuse to strike out the section.

Mr. TOWLE. Mr. Chairman. We have had considerable discussion during the sessions of this convention in relation to the rights of eminent domain, and also as to our power of taking another man's land with or without just compensation. In my opinion this amendment offered by the gentleman from Dodge (Mr. Gray) embraces all the objectionable features which have been opposed so. It invades the rights of individual property holders and subjects them to a tax to drain their own property, or rather allows somebody else to drain it, when it may be that they are desirous of keeping their land as it is; before what court does this condemning come? Is it to be before the district court and before a proper jury?

Somebody proposes to make an exparte explanation before a commissioners court, and upon an examination an order for the drainage goes out and an assessment is made for a pro rata proportion of taxes. It is possible the drainage law can be made constitutional. A year ago the legislature of Indiana passed a drainage law, but the supreme court declared it was unconstitutional. I believe it strikes right home to the individual rights of citizens. The principle laid down by the gentleman from Dodge (Mr. Gray) is unjust.

Mr. GRAY. Mr. Chairman. The gentleman makes a strong illustration by way of comparison, when he compares this to a railroad enterprise. Why, they are no more alike than night is like torrid noonday. He knows a railroad who charges for freight for passengers, is owned by a corporation; it is individuals who own this ditch, not an individual, not a corporation, the whole public own it, it is free to all. It benefits those persons most that own the wet land, they have a joint interest in it, it benefits the whole people in that section of the county, no man, no set of men, no corporation can claim an ownership in it. Who was denied the right of the state or county to build roads, construct bridges, used for public use, and levy taxes for that purpose, who ever denied that right? Taxes can be used for this purpose because they are used for a public object.

Mr. GRIGGS. Mr. Chairman. As far as I am individually concerned I don't know of any county in the district which I represent that needs this law. I do not think there is any swamp land in the district, but if there is any and the parties who represent that district are in favor of having the law I am perfectly willing they should. I know that law worked a great benefit to Indiana. I happened to live in a part of the state where it did a deal of good. There were some who had a piece of land it was necessary to go through would say, "you shall not dig a ditch through my land;" they retard the growth of the county. If there is any portion of our state that asks for this law in order to make this swamp land valuable. I believe the private right of any one individual ought to give way for the public good, and therefore I am in favor of the proposition of the gentleman from Dodge (Mr. Gray.) He says they have in his county such land as needs to be drained.

Mr. WAKELEY. Mr. Chairman. I understand the object of offering this amendment, which is to obviate any doubt that might arise as to the constitutional power of the legislature to pass such a law. If we incorporate into our constitution an express provision that the legislature may pass such laws, of course they will be constitutional. I personally know, Mr. Chairman, that there are large districts of country near the Missouri river where a law of this kind would be very valuable, there are large tracts of land of as good soil as is to be found in any part of the state, or any state in the union, where the lands are valueless for present use for want of good drainage. I know that is particularly so in the counties of Burt and Washington. The right to pass such a law rests upon the same ground as the right to carry on any public improvement, and to assess the expense of the improvement on the lands specially benefitted It is to promote a great public object, to drain large districts of country which are now useless, and bring them into cultivation. I believe it is proper that the legislature should be clothed with this power, perhaps they would have it without this provision, but it is well to remove all doubts upon this question. I think the amendment should be adopted.

Mr. BALLARD: Mr. Chairman. I hope the motion to strike out will not prevail. We have in Washington county a large quantity of land that ought to be drained. The great trouble is these lands are owned by speculators non-residents of the state. If the citizens propose to ditch them, they cannot do it without going through the non-residents' land, therefore we want a law to give us the authority.

Mr. MASON. Mr. Chairman. Principles never change, the interests of men do, and it is wonderful what "a change has come o'er the spirit of some men's dreams." Since we discussed this whole question in the Bill of Rights, their interests have changed, but the principle we contended for remains the same. I do not propose here to repeat the reasons I then urged. If sir, Mr. A says I want the water to float over my land; I want it as God made it, what right have you to tax him to unmake it? Yes sir, the cranberry patch again, the principle remains the same and it is a mistake to think that I contend for one principle for railroads and another principle to the private citizen. The same rule is adopted. And I would add today if Mr. A desires to drain his land, let him dam his neighbor's land to make a ditch, and pay for what damage he does, because the land is his own, and the property is his own. Mr. A objects, no ditch shall go across his land until you pay him for the land taken and the actual damage done to the remainder of the tract. There are objections to this provision in detail. Analyse it for a single moment. You may provide for draining wet or overflown lands, you give the county commissioners authority to construct ditches for that purpose, and levy and collect taxes upon the lands; this is most extraordinary power to vest in county commissioners. Why sir, in the little town in which I live I have observed that whoever is alderman. the streets are all graded in front of his house, whoever is mayor, the streets upon which he lives are always graded, and if Mr. Commissioner owns a quarter section of swamp land, Mr. Commissioner will be sure to drain that neighborhood at the expense of every land owner, because this is human nature. Besides I have in my mind another town where the same rule applies, where the alderman and mayor always grade the streets in front of their lots and their houses. It is not vesting this power in a legislature, but it is required that they shall vest this power in the commissioners and for that reason I object to this provision, but principally on the ground that it is wrong. I stop at the sacred boundary of private property, and with me sir, principles do not change with a change of interest; the principle that was right in application to the private individual is right in application to the corporation, and when that principle was discussed, this convention, as a body, sanctioned the rule laid down in the Bill of Rights, and planted itself upon the principles of justice by a vote of eleven to some twenty-seven. Now, it would make a most remarkable and sovereign change, that a change should be wrought. I am opposed to the amendment. I have no objection to section forty-six. As it stands in the reported bill I have serious objections; and in support of them I simply cite the argument I made on this question in the bill of rights, every word of which applies with all its force to the matter now in hand. It seems to me there has been some shrewd engineering here. The gentlemen who fought hard to insert this dangerous proposition in the Bill of Rights were compelled to it by the overwhelming power of local interests. The same principles are involved. For this reason I oppose it.

Mr. ROBINSON. I am opposed to the legislature having such power as is given in section 46. I think it ought to be governed by the rule laid down in the Bill of Rights. I do not think we have any right to legislate.

Mr. HASCALL. I think something ought to be inserted in the constitution on this subject. I believe the interest of ditches in the western part of the state will be an important one at no distant day; and there should be some mode pointed out for condemning land for that purpose. I claim that if there is land which is overflowed, or lands containing ponds of stagnate water liable to injure the health of the people, it ought to be drained; and some mode should be pointed out to enable the owner to accomplish that object. And if we procure and allow the same compensation as is allowed owners of land by railroad companies where railroads have passed through their property, that is proper. The proposition of the gentleman from Dodge is better than none at all. If his proposition is not such as to meet the approval of members, then it is our duty to amend it and put it in some shape that it could meet the approval of us all. To the section as reported, so far as it goes, I see no objection; and the amendment I have introduced with regard to condemning lands is certainly just and proper. If there is anything further required, I leave it to the gentleman from Dodge to make what he wants.

Mr. MAXWELL. Mr. Chairman. I am free to say that I propose to apply the same rule in all cases. We applied one rule in the Bill of Rights, and it is just; and we ought to adopt no other rule in favor of ditches. This section, if allowed to stand as printed, is unobjectionable, I think. "The legislature may pass laws," etc. Simply gives the right. But the principle of the Bill of Rights comes in and says the benefit shall not be set off against the damages.

Mr. HASCALL. I will ask the gentleman what objection there would be by adding the amendment introduced by myself to that section?

Mr. MAXWELL. In regard to ditches, they have to be constructed, and they are designed to benefit, and the water will be carried over the land of parties who did not wish to contribute. I think it will be well to retain this section. I trust the motion to strike out will not be sustained and that the amendment will be voted down.

Mr. GRAY. Mr. Chairman. It

seems to me that the gentlemen from Otoe and Cass went a long way to prove their case by referring to the Bill of Rights. The Bill of Rights is a good thing. Its provisions are good, but they have no application, nor does the argument of the gentleman from Otoe apply to a case like this. He says we have provided that you shall not take private property for public use without just compensation; and he says the man shall have his right to his cranberry patch. Well, will he say that some enterprising butcher, carrying on business, say in Nebraska City, shall have a right to come into the suburbs of the town—right near the gentleman's own residence, which I am told is finely adorned, and erect his slaughter house and make a nuisance for the whole city. Or will he carry it so far as to let any man or set of men to maintain a nuisance anywhere, or carry it so far as not to allow the people to remove the swamps, to protect the health of the country. Most certainly he will not. If he reflects one moment he will see it legitimate and proper, and in violation of no one's rights to remove anything that is a nuisance to the community.' I will admit gentlemen ought to be allowed to have their cranberry patch when it does not interfere with the general good. But if it is a nuisance, for any cause then it is proper and legitimate to drain it, and convert it into any other use. And I go a long way with the gentleman, but not so far as to prohibit people with this kind of land, which creates ague, fever, and malaria, from draining it.

Just one word in regard to the county commissioners collecting taxes upon land remedied by such drainage. It has become uniform law that taxes may be collected and levied upon the adjacent property, to grade and improve streets in the town; and it is not in violation of private rights. If they be so, it is legitimate and proper to give, to some extent, in this case. It is not possible that the gentleman from Otoe would be willing to carry his Bill of Rights to the extent as not to allow that principle to apply, and collect taxes to keep adjacent streets in repair.

Mr. MANDERSON. Mr. Chairman. I do not believe that upon the statute books of any of the United States, there exists a better "ditch law," so called, than that to be found upon the statute books of Ohio, passed, I think, in 1866 or 1867. A large area of swamp lands in that state have been drained and made arable, to the benefit of individuals owning adjacent lands and to the great good of the state at large, under its beneficent provisions. The great "Black Swamp" in Northwestern Ohio and low and worthless lands in the counties of Lorain, Cuyahoga, Stark and Trumbull have to my knowledge been reclaimed from uselessness by a judicious system of drainage by ditching and made productive and valuable. I hold in my hand a newspaper, just received, which exhibits the last end of a litigation instituted by myself over three years ago, designed to construct a ditch to drain a great area of swamp land in Northern Ohio. The case was known as the Marlboro Ditch case and under this law there is now in process of construction in Marlboro township eleven miles of main ditch and five miles of lateral ditches. This paper shows the apportionment of the ditch to be dug and the money to be expended among the persons benefitted by its construction. The working under the statute referred to is about as follows: Where parties have swamp lands that for the public health, convenience or welfare should be drained, they apply by petition to the county commissioners who, after proper notice to parties interested hear and determine upon the necessity of the drainage. The action of this board is reviewed by the Probate Judge of the county and if he agrees with the county commissioners that the necessity exists and that the lands should be drained the ditch is ordered to be constructed. Proper surveys and estimates being made, the work and the expense is equitably apportioned. And in this manner this good work has been accomplished.

This law was passed in the state of Ohio without any enabling constitutional provision. Gentlemen will search in vain in the constitution of that state for a word upon the subject. I am in favor or good legislation to drain swamp lands but will vote against the section because I do not believe we need any such provision in our organic act. The legislature can enact wholesome ditch and drain laws without a constitutional clause requiring such action.

The CHAIRMAN. The question is upon the motion to strike out section 46.

The committee divided, and the motion was agreed to.

The Chairman read the next section, as follows:

Sec. 47. The legislature shall pass liberal homestead and exemption laws.

Mr. ROBINSON. Mr. Chairman. I move to strike out the word "liberal."

Mr. PHILPOTT. Mr. Chairman. I move to strike out all after the word "pass," and insert the words "laws to make females electors."

Mr. MASON. Mr. Chairman. I think it would be well for the gentleman to amend his motion by requiring the legislature to pass laws making females males.

The Chairman did not entertain these motions.

Mr. HASCALL. Mr. Chairman. I move to strike out the section.

The motion was agreed to.

Mr. MAXWELL. Mr. Chairman. I offer this as an additional section.

The Chairman read the proposed section, as follows:

"The legislature shall provide at its first session under this constitution for the appointment of one or more commissioners, to be appointed by the supreme court to collate and revise the laws of this state and submit the same."

Mr. MAXWELL. Mr. Chairman. The object of this section is to provide for the appointment of this commissioner, so that the laws shall agree with the provisions of this constitution. I was in the legislature when the law was passed providing for the present revision of our laws. There was a great deal of difficulty in appointing the man to do the work. I think the supreme court should appoint this commissioner. Since the revision of our laws we have had four or five sessions of the legislature. It is necessary there should be a revision to comply with the provisions of our constitution.

Mr. ROBINSON. Mr. Chairman. I hope none of these mandatory laws will pass, or become connected with this constitution. I would ask the gentleman from Cass (Mr. Maxwell) what he would do if the legislature saw fit to recognize the authority of this body? Is there any way in which we can enforce provisions of this kind in such cases? I hope the amendment will not prevail.

The CHAIRMAN The question is upon the proposed section offered by the gentleman from Cass (Mr. Maxwell.)

The section was not adopted.

Mr BOYD. Mr. Chairman. I offer a separate section

The Chairman read, as follows:

"The legislature shall not ratify any amendment to the constitution of the United States nor consent to any alteration therein until a general election for members of the house of representatives shall have been held after such amendment or alteration shall have been proposed by congress to the legislatures of the respective states."

The CHAIRMAN. The question is upon the separate section proposed by the gentleman from Douglas (Mr. Boyd.)

Mr. BOYD. Mr. Chairman. By referring to article 5th of the constitution of the United States we find there are two ways by which amendments can be ratified; by three-fourths of the legislatures of the several states or by conventions of three-fourths thereof, as the one or the other mode of ratification may be proposed by congress.

When congress proposes that the amendment shall be ratified by three-fourths of the legislatures of the several states (which for the past six years has been the method), the legislatures that have acted upon the proposed amendment have not probably in a single instance, been elected with that purpose in view, consequently the will of the people has been very seldom expressed by the action taken by the legislature, and in many instances a totally different course has been pursued from what a convention elected by the people for that purpose would have adopted.

My object in offering this section is, that before any amendment to the constitution of the United States can be ratified by the state of Nebraska that the people shall be consulted and their consent shall first be obtained at the ballot box before any alterations or additions can be made.

By this provision, Mr. Chairman, we establish the principle we all agree to be the true one, that governments derive their just powers from the consent of the governed.

It is a measure so plain in its terms that it needs no argument to show its justness and the end sought to be obtained. If a constitution means anything, it means that the will of the people as expressed at the ballot box is the supreme law of the land, and this section will guarantee to the people of Nebraska the right to elect a legislature with reference to the amendment submitted.

By a provision already adopted by this convention, if ratified by the people,—and I have no serious fears on that subject—before an amendment can be made to our state constitution, it must be agreed to by a majority of both houses of the legislature in which it is proposed, be published three months prior to the election of the next legislature and receive the support of a majority of both houses of the newly elected legislature and be ratified by the people at the next general election. If this convention deem it necessary to guard the interests of the people of Nebraska in this salutary manner, how much more necessary is it that we see that no amendment to the federal constitution should receive the sanction of a partisan legislature in direct opposition to the will of the people. Although there may be no provision in any of the state constitutions similar to this, by engrafting it in the constitution of our state other states will soon follow our example as the justice of the measure cannot fail to commend itself to the patriotic men of both parties.

I will leave the law to be discussed by my friend from Otoe, Judge Mason.

Mr. HASCALL. Mr. Chairman. I rise to refute the subtle arguments in this carefully prepared speech of my colleague (Mr. Boyd). He says that many amendments have been provided for by congress that would not have been accepted by the people of the country generally. I deny this in toto. I think every amendment proposed by congress and ratified by the legislatures of the different states has always been agreeable to the people.

Mr. TOWLE. How about the Fifteenth amendment in Ohio?

Mr. HASCALL. That is a good democratic fling, but as it comes from a long distance off, it comes very weak. (Laughter.)

The men who accepted this amendment in the legislatures of the different states were elected by the people, and sworn to do their duty.

Mr. McCANN. Mr. Chairman. I suggest to the gentleman from Douglas (Mr. Hascall) that there has been a "new departure" and the people in Ohio take a different view of the Fifteenth amendment now. (Laughter.)

And I say that those parties in these different states who undertook to do that which was improper for them to do; they did not reflect the will of the people they represented, and further the people of Nebraska at no time in ratifying the different amendments have ever been of a sentiment different from what has been expressed by the legislature. I would be reconciled to the proposition, but it is the carefully prepared speech and the sophistry of that speech that I am opposed to.

Mr. ROBINSON. Mr. Chairman. I

ask to have the proposition read again.

The Chairman read, as follows:

"The legislature shall not ratify an amendment to the constitution of the United States, or an alteration of the same, until an expression of the people shall be had by the election of a legislature subsequent to the submission of this amendment."

Mr. ROBINSON. Mr. Chairman. I hope that this section will not be adopted. I don't know that I am opposed to the principle expressed in the section. I think that all such should be put forward with consideration, but I ask if it is not just as well to say that the legislature shall not ratify an amendment until submitted to the people of the state and voted upon by them.

The CHAIRMAN. The question is on the adoption of the section.

The section was not adopted.

Mr. WAKELEY. Mr. Chairman. I wish to offer a section reading thus:

"No act shall take effect until the first of July next, after its passage, unless in case of emergency, expressed in the preamble, or an act of the legislature shall, by a vote of two-thirds of all the members elected to each house otherwise direct; nor shall any act take effect until it shall have been published according to law."

I will say, Mr. Chairman, that I regard that as an important provision to be inserted in our constitution, it is taken from the constitution of two states, Illinois and Wisconsin. It fixes in the constitution a definite time when laws shall take effect, unless under extraordinary circumstances. This will give the community time to examine the laws and know what they are. I think there can be no objection to the section.

The CHAIRMAN. The question is on the adoption of the section offered by the gentleman from Douglas (Mr. Wakeley.)

The section was adopted.

Mr. HASCALL. Mr. Chairman. This article is a long one and we have made several changes in it. I think that would be right and proper, that is why I wish to keep the floor until I could explain this matter. I move the committee rise and report the article as amended with the recommendation that it be adopted.

The motion was agreed to.

Mr. SCOFIELD. Mr. President. The committee of the whole have had under consideration the legislative article, and beg leave to report it back with sundry amendments, and recommend its adoption.

The report was adopted.

Leave of Absence.

Mr. LEY. Mr. President. I ask for an indefinite leave of absence

Leave was granted.

Committee on Revision and Adjustment.

Mr. THOMAS. Mr. President. I move that Judge Wakeley be added to the committee on revision and adjustment.

Mr. LAKE. Mr. President. I move an amendment, that he be appointed chairman of the committee during the absence of Mr. Woolworth.

The amendment was agreed to.

Adjournment.

Mr. MYERS. Mr. President. I move we adjourn.

The motion was agreed to.

So the convention at six o'clock and six minutes adjourned.

THIRTY-FIFTH DAY.

Friday, August 4, 1871.

The convention met at eight o'clock and was called to order by the president.

Prayer.

Prayer was offered by the chaplain as follows:

Almighty and eternal one, we would thank Thee for the morning, may it please Thee to guide us through the day, keep us through life and keep us ready for the judgment. May we by Thy grace be enabled to render unto Caesar the things which are Caesar's and unto God the things which be God's. May the grace of our Lord and Savior Jesus Christ be with us now and ever. Amen.

Reading of the Journal.

The journal of the proceedings of the preceding day were read and approved.

Resolutions.

Mr. STEWART. Mr. President. I wish to offer a resolution.

The secretary read the resolution, as follows:

Resolved. That no member shall speak more than ten minutes in convention or committee of the whole at any time, and but once upon the same subject except the chairmen of committees who have not yet reported.

Mr. STEWART. Mr. President. I move the adoption of the resolution.

Mr. HASCALL. Mr. Chairman. I move to insert fifteen minutes.

Mr. STEWART. Mr. Chairman. If they will only speak once, I accept the 15 minutes.

Mr. MYERS. Mr. Chairman. It is more important to speak twice five and ten minutes each than to speak once for fifteen minutes I shall prefer ten minutes for reply.

Mr. HASCALL. Mr. President. A member can hardly express himself properly in ten minutes but could in fifteen minutes.

Mr. MANDERSON. Mr. President. I would suggest to the mover of this resolution, that he allow members to speak ten minutes the first time and five minutes the last time.

Mr. KIRKPATRICK. Mr. President. I understand from the gentleman himself that he is going to leave the convention, and will be away for sometime. I don't think he should fix the rules of this convention.

The PRESIDENT. The question is upon the amendment offered by the gentleman from Douglas (Mr. Hascall) to the resolution offered by the gentleman from Pawnee (Mr. Stewart.)

The convention divided and the amendment was not agreed to.

Mr. STEWART. Mr. Chairman. I accept the amendment of the gentleman from Douglas (Mr. Manderson.)

The CHAIRMAN. The question is upon the resolution as amended, which allows chairmen of committees ten minutes for opening and five minutes for closing debates upon their reports.

The ayes and nays being demanded, the secretary proceeded to call the roll.

The president announced the result—ayes, 26; nays, 14—as follows:

AYES.

Abbott,
Ballard,
Boyd,
Campbell,
Curtis,
Gibbs,
Gray,
Hascall,
Lake,
Lyon,
McCann,
Majors,
Manderson,
Myers,
Newsom,
Reynolds,
Scofield,
Speice,
Stevenson,
Stewart,
Thummel,
Thomas,
Tisdel,
Vifquain,
Wakeley,
Wilson.—26.

NAYS.

Cassell,
Estabrook,
Granger,
Kenaston,
Kilburn,
Kirkpatrick,
Mason,
Moore,
Neligh,
Philpott,
Price,
Shaff,
Sprague,
Weaver.—14.

ABSENT AND NOT VOTING.

Eaton,
Grenell,
Griggs,
Hinman,
Ley,
Maxwell,
Parchin,
Parker,
Robinson,
Towle,
Woolworth,
Mr. President.—12

So the resolution was not agreed to, as a two-thirds vote is required to change a rule.

Committee of the Whole.

Mr. CASSELL. Mr. President. I move we resolve ourselves into committee of the whole for the consideration of the report of committee number twenty-two (state institutions and public buildings.)

Mr. McCANN. I give notice that I give way to the report of this committee. The report of the committee on revenue and finance should have been taken up this morning; but that will come next.

State Institutions and Public Lands.

So the convention went into committee of the whole—Mr. Manderson in the chair—for the consideration of the report of the committee on state institutions and public lands (No. 22).

The CHAIRMAN. Gentlemen of the committee, you have under consideration the report of the committee on state institutions and public buildings and lands. I will read the first section, although, it may be, the former action of the convention has done away with the necessity of reading it.

Section 1. That a board of commissioners consisting of———, to be called commissioners of state institutions and public buildings, shall be elected at the first general election provided for in this constitution, whose duty it shall be to have the general supervision and control of all state institutions and public buildings, and the care and sale of all all lands appropriated for and belonging thereto.

Mr. ABBOTT. I move that section one be stricken out.

The motion was not agreed to.

The chairman read the next section, as follows:

Sec. 2. Said board of commissioners shall let contracts for the erection of new state buildings, additions, repairs and supplies for the same to the lowest responsible bidder, after duly advertising the same, and shall perform such other duties as the legislature shall hereafter provide.

Mr. CASSELL. I move it be stricken out.

The motion was agreed to.

The chairman read the next section, as follows:

Sec. 3. The board of commissioners of state institutions and public buildings shall perform the duties of the normal school board of education, and shall be regents of the state university and agricultural college. The governor, as member ex-officio and chairman shall complete said board of regents.

Mr. CASSELL. I move it be stricken out.

The motion was agreed to.

The chairman read the next section as follows:

Sec. 4. The term of office of said commissioners shall be for three years, excepting the first, which shall be for one, two and three years, and there shall be elected one in each judicial district of the state. The electors in each district shall vote for one commissioner to be a member of said board, and for one only. Before they enter upon the discharge of the duties of their office, they shall each take the oath of office prescribed for the state officers, and shall each execute a good and sufficient bond to the state for the faithful performance of the duties of the office, in double the sum of monies that is liable to come into their hands during their term of office.

Mr. CASSELL. I move it be stricken out.

The motion was agreed to.

The chairman read the next section as follows:

Sec. 5. Said board of commissioners shall receive such compensation as the legislature shall hereafter provide.

Mr. NEWSOM. I move the section be stricken out.

The motion was agreed to.

The chairman read section one in the "Article."

ARTICLE——

Section 1. The state institutions and public buildings shall be located and built at the capital of the state.

Mr. PHILPOTT. I move to amend by inserting after "buildings" in the first line, "except such agricultural colleges as may be hereafter located."

Mr. WEAVER. I move an amendment to the amendment, by striking out, in the first line, the words "state institutions and public" and insert the word "all" before "buildings," and "and elsewhere" after the word "state," so that it will read:—"All buildings shall be located and built at the capital of the state that are not built elsewhere." (Laughter.)

The CHAIRMAN. Gentlemen. The question is on the amendment.

The CHAIRMAN. The question is on the amendment proposed by the gentleman from Lancaster (Mr. Philpott.)

The amendment was not agreed to.

Mr. HASCALL. I move to strike out the section.

The motion was agreed to.

The chairman read the next section, as follows:

Sec. 2. The capital of or seat of government of this state shall remain at the city of Lincoln.

Mr. HASCALL. Mr. Chairman. I hope that will be adopted. I think the permanent seat of a government should be preeminently so at Lincoln as it is now, where it is convenient of access by railroads. It is a poor policy for a state to let its capital go floating around. The public buildings and grounds are here, and it is a question that should be kept out of the state legislature. We should make this as a part of our constitution so that the people of the state shall vote upon it as a part of the constitution, for if we leave it otherwise the first thing we know the capital will be moved off and the state be put to a great expense. It is an important question. When it is desired to remove the capital the voice of the people should be heard upon it first, and if a majority of the people desire a change then it can be done and the removal will be satisfactory, but if you leave it to be wafted by the mere breath of the legislature, then you are liable to be without a home and a capitol building and to have a capital wandering over these prairies; that would be detrimental to the interests of the state. I therefore hope that this section will be inserted in the constitution.

Mr. STRICKLAND. Mr. Chairman. I fully endorse what has been said by my colleague (Mr. Hascall) and add another thing, and that is if the capital may not be permanently located here; that it be fixed here for ten years at least. Now it is true that the legislature when they would act upon a subject matter like that must all of them act with reference to locality. I think this convention should fix a time at least for the capital to remain here. I hope if the proposition does not prevail that some definite time will be fixed upon.

Mr. KILBURN. I move to add to the section "until January 1st, 1885."

Mr. MAJORS. Mr. Chairman. So far as I am concerned individually or the constituency which I represent, I don't think we are in favor of a removal of the capital, but to tie it up in this way, so as to say the people shall not have a voice in it I am opposed to it. Many of the people will record their votes against the whole constitution on account of this section if it is in it. The gentleman from Omaha for some reason was opposed to removing this capital from Omaha——

Mr. HASCALL. Not opposed to the removal, but to removing it to Ashland.

Mr. MAJORS. I propose to make my own statements and will let the gentleman have the benefit of it. I know that there was an excitement, gotten up at that legislature and the speaker deposed and a mob gotten up. I think we can always leave such question in perfect safety with the people themselves and when they desire to have the seat of the government removed they should have the privilege of doing so without the expense of an election. In the remarks that I have made I do not wish to cast any reflection upon the present good feeling of the gentleman from Omaha. I hope we will consider this matter and leave it where it ought to be, with the people.

MR. HASCALL. Mr. Chairman, I will not take up much time of the committee. The gentleman says he has a right to make such statements as he sees fit. I take it for granted he has, but when he states that there was a strong feeling gotten up in Omaha against the removal of the capital, he states that which he knows to be incorrect. He is mistaken as to the time when this feeling which he refers to in the legislature was in the territorial legislature, while this removal was made in the the state legislature subsequent to that. I know too that I drafted a bill which proposed the removal of the capital from Omaha to a point within five miles of the mouth of Salt creek, with a view of locating it at Ashland. Those are the facts of the case, that bill only required the concurrence of the Cass county delegation to make it a law. They held a caucus in the city of Plattsmouth upon that subject which our friend Maxwell attended, they concluded that Ashland was too near Plattsmouth, therefore they preferred to have it at Lincoln. At the time this capital was removed Omaha did not want it, they were satisfied to let it go, they preferred to have a high school upon that hill, and at that same session of the legislature I drew up a bill which passed the senate by a vote of nine to three, devoting that same tract of ground for the purpose for which it is now used, but from some little opposition in the house, in which members thought it should not pass over to the city of Omaha until the records and state property were finally removed to Lincoln it was postponed to the next session, and at no time since the seat of government has been removed would they have it under any circumstances. It is a petty matter that only excites paltry prejudices among some small men on a subject of this kind. Omaha can well afford to have her commerical advantage kept free from these little questions of capital and so forth, and have it in some interior locality, that does need these facilities in order to build them up. Now, I am not an admirer of Lincoln particularly. Why I go for permanently locating it here is because it is geographically located. It is a railroad center, you can reach this point from all portions of the state. All the railroads are pointing here on account of its being the capital of the state. There is one from Richardson county, another from Cass county, one from Otoe county and one from Omaha, and we will have roads from Columbus, Grand Island, and Beatrice. When the legislature assembles here and want to go home for a day or two to attend to business—for they are generally business men, they can go, or to spend the Sabbath and return fresh for work on Monday.

Mr. BOYD. I wish to offer an amendment. "Until the year 1880 and thereafter until otherwise provided by a law, designating some other place as the capital, and which shall be submitted to, and be approved by, a majority of the electors voting thereon."

Mr. KILBURN. I accept the amendment.

Mr. MAJORS. Mr. Chairman The gentleman from Douglas, (Mr. Hascall's) and my remembrance of the history of the removal differs very much, and I am very willing to leave the matter to the records of the past. I know however, that this opposition to the removal of the capital was in a state legislature at its first session, and the gentleman is mistaken instead of myself. The whole transaction took place in the first session of the legislature of this state.

Mr. STEWART. The gentleman from Nemaha (Mr. Majors) is mistaken, it was in the territorial legislature.

Mr. MAJORS. That is true. I remember it now.

Mr. KIRKPATRICK. Mr. Chairman. I arise on behalf of my friend Maxwell who has been alluded to. I do not propose to go into a discussion on the past history of this state. I have been in the territorial legislature a good many sessions. The gentleman from Douglas (Mr. Hascall) tries to make us believe he was a removal man, that he desired the capitol be removed from Omaha, he goes on to say he prepared a bill by which Omaha was to take the capitol buildings and grounds for a high school, and that was a part of the removal scheme. I do not know whether there was any trade or not. I have heard it insinuated there was. I believe in connection with this removal there was a little subsidy of seventy-five sections of state lands, the first lands that were voted away by the legislature of Nebraska. It was voted to a railroad company which was not incorporated at the time. I believe that was a part of the trade. With regard to the feelings of the people at Plattsmouth, he says the seat of government would have been removed had it not been for the opposition of the members from Cass. Now I know that those who represented Cass county at that time preferred Ashland to any other place, and I know they did not support the location by commissioners at this place. I am inclined to think the representative from Otoe county would not sanction the bill to locate the capital at Ashland.

Mr. STRICKLAND. Did not I vote a good many times in the legislature for removing the capital?

Mr. KIRKPATRICK. Certainly.

Mr. ESTABROOK. (To Mr. Strickland.) Did not you vote to locate it at the town of Douglas?

Mr. STRICKLAND. Yes, sir, and that was within a mile of this spot.

Mr. KIRKPATRICK. I never introduced a proposition to remove the capital of the state from Omaha City. I was satisfied that was as good a place as we could have it. I believe I can speak for Mr. Maxwell that he did desire the location of the seat of government at Ashland, and the people of Plattsmouth also. I shall oppose the motion to strike out. I think the capital should remain here. I think we ought to adopt the section just as it is.

Mr. STEVENSON. Mr. Chairman. I hope this motion to strike out will prevail. One would think, judging from the tenor of the argument this morning, that the only places in this state interested in this question whatever, are Omaha and Lincoln. I must admit Omaha is quite a village, but there are other places in the world, and I think if the people at any time see fit to take the capital away from Lincoln and remove it to some other place they have a perfect right to do it. It is very handy for these members from Douglas county and around these different places when the legislature is convened here, to go home and spend the Sabbath, but they must recollect that there are many members here that cannot go home in that way. It is very inconvenient for many parts of the state. Now, I am in favor of leaving this to the people; not of putting a clause in the constitution making the capital here, for any definite length of time. I do not think it will be removed unless necessity requires. I think the people will take into consideration before its removal, the expense of the proceeding. And I think, also, if we should happen to have the misfortune of having this capitol building burned down, and the people thought best to remove it they could have the right to do so. I do not see why the people are not willing to trust the legislature with this matter. There is no danger of them all agreeing to any one locality, only as such locality will accommodate the majority of the people of the state, and when the legislature does agree I believe the people will agree with it. I do not think there ought to be any restraint placed in the constitution whatever.

Mr. PHILPOTT. I believe in the early part of this session I stated that the capital of the state belonged to the people of the state, and not to the people of Lincoln only. I do not rise to speak merely as a delegate from Lancaster county, but rather as one who is speaking in behalf of the interest of the state. This capital has been located here but very recently. I think in the actions of the state there ought to be some stability. I can see no reason why the convention should not adopt this amendment. I believe, sir, it is not an unreasonable request. It is due the people who come here, and due the corporations who have in view the construction of railroads at this point that the capital remain here for ten more years, that there may be something to be relied on. And that those who invest may be paid by their investments. Fourteen years is as short a time in which the people ought to re-locate the capital. And after that time if the people want to remove, let them do it. But at least for ten years I think it should remain. For these reasons I hope the motion to strike out will not prevail, and that the amendment offered by the gentleman from Douglas locating it until 1880 may prevail.

Mr. MASON. Mr. Chairman. I can see some reasons which are satisfactory to my mind why the amendment—or something similar—proposed by the gentleman from Douglas should be adopted by this convention. First, it removes from the legislature the temptation which always is incident to a change of the seat of government; and transfers it from them to the people. Besides it does not give any commissioners a chance to get eighty acres or 150 acres of land adjoining the location, for a nominal sum, to speculate upon. Besides, sir, it first requires the place to be designated and that designation submitted to a vote of the people. This, sir, I think is right. And some provision similar to the amendment moved by the gentleman from Douglas, seems to me should receive the sanction of this convention.

Now, sir, one word in regard to that amendment. I understand that the friends of the permanent location of the capital are more than satisfied with the proposed amendment. If they are, sir, then I am more than satisfied. Not, sir, that I am either the friend or the enemy of this proposition; but that this is my view. The re-location of this capital did more to develop this part of the state in my judgment, than any other one thing that has transpired. Why, scarcely a year before its re-location when there was scarcely a settlement on these creeks, there was not a mill nearer than Weeping Water, and those settlers were all poor; had scarce anything to eat and had to carry their grain on their backs to the mill. What did the location do? As if by magic, it became the center for railroads, and there was a commercial interest developed that stands out in history without a parallel. And, sir, if so much has been accomplished for that section of the country by the re-location of this capital when it was relocated, and the gentleman from Douglas says Omaha was not injured by it, which statement I believe is true. The time may come, sir, in the future, when the relocation of the capital shall develop another commercial center within the borders of this state; when it shall open up the gate ways of commerce, and extend the power and influence of the state. And when that time shall come, sir, even the owner of property in Lincoln should not permit his individual interest to change his patriotism, and stay the development of the state. That time, sir, is not yet. The amendment proposes or contemplates the fixing of that time ten years hence; and when that ten years shall have rolled around, then the legislature is powerless to pick up the seat of government, to locate it as a question of speculation and interest, and, gentlemen, when I say this I intend no sort of reflection upon former legislatures. I only allude to it in the light of history, because this state, and older settlers will bear in mind that it was said, large sums of money were expended in fixing the location of the capital at Omaha. Whether it is so or not, I know that a mule load of gold was sent from a city, and the mule got stuck in the snow drift and did not arrive soon enough; and my friend will remember it well. I would so enact a law in this constitution as to prevent any such results as that. And it is said that in the last change of the location of the capital, seventy-five sections of land were squandered to secure this result. This is said. Whether truthful or not, I do not pause to consider; but because these things are said to have occurred I would urge upon this convention the propriety of some such provision as that suggested by the gentleman from Douglas, transferring this location, if it should ever arrive in the fullness of time—and I am one of those who hope the time will arrive. I hope to live and see the day when these prairies of the west which are now as a desert plain, shall be transformed into beautiful vineyards and fields of yellow corn, laughing in the morning sunlight with their burdens of wealth, and when railroads shall traverse every ten miles. Then, sir, I hope to see the time when this capital shall be located nearer the center of this great commonwealth; and I would not put it beyond the power of the people to accomplish this result. And in bringing it about, I would put it beyond temptation, and leave it to the great mass of the electors, so that there could be no interest or parties served by buying and selling, or trafficking. I would take it from the hands of commissioners and leave it to the sovereign vote of the people. And this proposition, being satisfactory, as I am informed, to the gentleman here, it is abundantly satisfactory to me. Therefore, I hope it may prevail.

Mr. MYERS. Mr. Chairman. I am in favor of locating the capital here long, as long as the people desire it to be here; and that it should never be removed only by the consent of the majority of the voters of the people submitted to them with the understanding where it is to go, under such circumstances and no other would I ever permit the moving of the capital or confer that power upon the people. Now, I am in favor of permanency in our capitals. There are but few capitals which have been removed in the history of the world. The capital of Russia was removed from Moscow by Peter the Great; the capitals of some other places; such as county towns, have been removed too; but they cannot compare at all to the capital of Russia.

The capital becomes vested with interests and associations. Now on a recent visit to the farm of the Hon. Sterling Morton in Otoe county I saw an immense machine which was gotten up, I think for the express purpose of planting capitals all over this state. It was a large machine. I think we should bring this machine here. Establish our capital on it, and move it about over the country every two years. But, Mr. Chairman, to talk seriously, it is folly to talk about removing the capital. Let us build up a good building here, be satisfied with it, I am in sympathy with my colleague (Mr. Hascall) in this matter. I have no interest in this particular locality, but I am satisfied it is to the best interest of the people of the whole state to have the capital of the state remain here.

Mr. KIRKPATRICK. Mr. Chairman. Who talks about moving the capital. Let us leave it here and build it up. The gentleman from Lancaster (Mr. Philpott) asks perhaps all we should put in this section. Now in regard to this question, I will say that whoever was opposed to the location of the capital here. I myself was in favor of it. I, sir, was in favor of the locating of our capital farther south and farther west than Ashland and after this location was made by the commissioners, I was in favor of it. At the first county convention in our county after this location was made, the question came up,and I drew up resolutions endorsing the action of the commissioners in locating it here. It was met with much opposition, but I carried it by a large majority of the votes of those at the convention. I am not willing to tie this up for an unending period of time. I do believe that our country farther west will fill up and that the center of our state will be farther west after a while. Now, sir, I claim that a state capital is merely a political capital in most of the states. It is untrue that they are generally great centers of commerce. It is so in but few states of the union. This capital is here for the convenience of the people of this state—the people of the whole state. I am not willing however, that the capital shall be located here and fixed permanently by constitutional provision. I believe, sir, that a great city will be built somewhere in this state, and this great center of commerce may go further west. If this should chance to be near the center of the state it might be well to locate our capital there.

Mr. WEAVER. Mr. Chairman. I have but a few remarks to make. I think this should be stricken out, for this reason. We have on several occasions, through fear that our constitution would be defeated, thought it wise to submit certain questions to the people. Now, it is a question whether or not the constitution would be voted down on account of this provision. Now, if I know that my vote would fix this capital here, safe for all time, I would vote for it. But there is a large number of our population farther west, who are not very well represented here, and they may vote our constitution down on account of its containing this clause. Why hazard this constitution? I shall vote against the proposition for this reason, and this reason alone.

Mr. CASSELL. Mr. Chairman. It seems to me that the very arguments used against this section are the ones which should be used in favor of it. Everyone knows that there is a great deal of needless expense attendant upon the removal of any capital and that this expense must be defrayed by the voters of this state. The voters are not going to vote to tax themselves $500,000 to pay for removing the capital.

Mr. BALLARD. Mr. Chairman. Let me ask the gentleman a question. How much do you suppose it cost to remove the capital from Iowa City to Des Moines?

Mr. CASSELL. I am not able to answer the question of the gentleman. But as I was going to say; the people who have invested their capital here, did so believing the seat of government was permanently located here and if the capital is now removed they will not invest in another scheme of this kind.

Mr. Chairman. This proposition would take the power of removing the capital out of the hands of the legislature and place it directly in the hands of the people. Perhaps the time may come when it will be just and right to take this capital farther west but when this time does come, we wish it placed directly in the hands of the people, and not in the hands of a few representatives who come here and get up a scheme for the purpose of making money for themselves. Of course when it is necessary to remove the capital, it can be done by a constitutional amendment, which can be made as any other amendment can be made. This is all we ask.

Mr. STEVENSON. Mr. Chairman. Incorporating this amendment in the constitution is an entirely new idea. I don't know a constitution in the United States where there is a constitutional clause fixing the location of the capital permanently. Here we are only about thirty-five miles from the eastern line of the state and a short distance from the southern. It seems to be an argument of the gentleman from Lancaster (Mr. Cassell) that the reason why the state capital should be permanently located here is because certain men came here and invested their money——

Mr. CASSELL. Mr. Chairman. I would like to correct the gentleman. I said that we could never get up another such scheme, if the state breaks her contract with the people here.

Mr. STEVENSON. God knows we never want another such scheme. It was only a scheme to take money out of the pockets of the people of the state. If the people want the capital removed, let them remove it. Let us not put a clause in this constitution which will prevent it. It is that precedent in other states. I don't see any reason for incorporating it in this constitution. It is branching out on a new idea entirely and by inserting it we stir up an opposition to this constitution. Let us leave it as it is. I don't fear that the capital will be removed in one, two or five years. It is now centrally located as to the population and will be until the western part of the state becomes thickly settled.

Mr. McCANN. Mr. Chairman. We propose to remove this matter from the legislature for at least ten or fifteen years. We are all well aware that it is not to the interest of the state at large or any portion that this question should be brought up or agitated at every session of the legislature. No individual desires it unless for private gain. I wish to see it fixed here for a certain number of years, and I hoped my friend would not accept the amendment for 1880, but leave 1885 remain.

Mr. ABBOTT. Mr. Chairman. The people are eminently satisfied with this. I am one of the people and I thought this removal was a good thing and it had not cost the people anything, until I saw the figures. If it has cost nothing where comes this $230,000 of indebtedness. Do the gentlemen want another Lincoln scheme. Great God think of it. Why do you want to fix it definitely in the constitution, is it because you are afraid of it being removed? (No.) Then why put it here?

Mr. Chairman. I am opposed to any location of the capital at Lincoln for any time.

Mr. PHILPOTT. *Mr. Chairman.* I have but few remarks to make. I concur in the amendment of the gentleman from Otoe (Mr. McCann) he remarked that it was very desirable to remove this question from the legislature for a time at least. I desire to call the attention of the gentleman from Cuming (Mr. Stevenson) to the constitution of the state of Ohio, which says the capital shall remain at Columbus for ten years, and after that it may be submitted to a vote of the people. I hope the amendment may prevail.

Mr. WAKELEY. Mr. Chairman. The first question I suppose we ought to settle is whether there will be any provision in the constitution in regard to the location of the capital. Suppose there is none, where is it left? As a matter of course the legislature has full power to remove the capital by law without restriction and without limitation. Now in the first place let us inquire whether it is best to leave it to the legislature to remove it any time they see fit. I don't contend here that there is any probability within the next ten years that the necessity of the state will require the removal of the capital. Then, sir, why leave it in the hands of the legislature? I am in favor of saying that the legislature shall not exercise this power for the next ten years, and then if the population of the state has so increased in the western portion as to become settled, the people can in their wisdom select a permanent capital. No gentleman I suppose will contend here that the capital should be removed more than once. It is not to be supposed that it will be necessary, it may not be necessary for many years to come. If that be so, why not tie the hands of the legislature so that they cannot remove the capital or disturb the peace of this little city by continually agitating the matter? I have happened to live in the capital of a state and had a seat in the legislature and I have to state that there was not a year passed but the question of removal was started up. It was a very common thing in some moment of caprice for a bill to be introduced into the legislature and sometimes to pass one house. Did it not result in anything? I think it did. It affects the rights and interests which were clustered about the capital, and sir, I say they should not be left to be tampered with by politicians. Mr. Chairman, I have no such confidence in legislatures as some gentlemen have, I have been around them too much in my life to go a great deal upon a legislature in any state. I can see no good that will be accomplished by leaving the legislature of Nebraska at liberty to create any scheme looking to the removal of the capital; upon the other hand, I do not think the capital should be permanently located here so as to place it beyond the reach of the people in some way. Whatever provision we may adopt in the matter, of course it can be changed in the ordinary mode of changing the constitution, and as a medium between saying nothing about it in the constitution and leaving the legislature at liberty year after year to discuss this matter, and permanently fixing it in the constitution, let us fix ten years as the period of time it shall stay here, then if the legislature shall propose some place as the future capital, and it receives a majority of the votes of the people, it ought to be removed. This will quiet the matter for the coming ten years, and will not deprive the people of any right they are likely to wish to exercise within the next ten years. I think it is a wise course and that it comes nearest being right of any policy we can incorporate in our constitution.

Mr. TOWLE. I have a substitute I desire to offer.

The CHAIRMAN. It will not be in order.

Mr. ESTABROOK. Mr. Chairman. This revives old memories, old scenes. This question of removal of capitals has been agitated the last seventeen or eightenn years. The first thing that greeted my ears on crossing the Missouri river on Jan. 3rd, 1855, was this thing in regard to the removal of the capital; it was a scene of commotion and recrimination from that time for a great many years, until the government appropriated money for buildings, and provided it could not be removed while a territory, then at the very first pop after becoming a state they removed it to this place. I know that in the first legislative body ever assembled in this state, the first of December, 1854. In that body were fourteen individuals who represented the city of Plattsmouth, which then consisted of one little log cabin, all of whom lived at Glenwood with their families, and their instructions were to go in for removing the capital to the city of Plattsmouth. Some of them came under some of the influence that prevailed at Omaha and violated their pledges in so far that at the close of the session an indignation meeting was held at Glenwood, Iowa, to call their representatives to account for misrepresenting them in the Nebraska legislature. From that time almost to this the subject of removal of the capital from Omaha was subject to the worst passions, the most terrible ill feeling and bad blood throughout the territory of Nebraska of any subject ever introduced in a civilized community since the world revolved. Students in eastern colleges discoursed eloquently on the horrors of Omaha and the capital connected with it. Mischief was involved in it all the time and those that never saw Omaha pictured it out as with hoofs, heads and horns and a long tail with a spike in the end of it. Well, sir, they went on and it was found to be tolerably accessible but it was horrible to have the capital at Omaha, and all South Platte would rise up in the middle of the darkest night to cast a vote for the removal of the capital. Then there was the scheme in which my friend Gen. Strickland took a very active part, to remove it to some place which the manipulators chose to call Douglas city, there was no survey made and no stakes set at the time. The commissioners were appointed to locate Douglas city, and set the wheels revolving to stake out the capital. That passed by a two-thirds majority through both branches, and it took a heap of good solid gold to overcome it. By the aid of $3,000 or $4,000 in gold it was fixed up and the capital was returned. $3,000 kept it on that occasion Well time rolled on and an appropriation of $50,000 and then $75,000 was made for the capital and then it was fixed permanently, and any law proposing the removal had no effect. Then the question of the coming state was agitated, and there were those who said if you undertake to make a state the capital would be removed. We took the word of the acting governor that it should not be disturbed, but lo, and behold, on the first occasion after the hands of the people were untied, the proposition was made at a special session, and commissioners were appointed with the power to rove through the length and breadth of the land to find some broad acres which would furnish some little percentage to put into the pockets of the manipulators, and so it was removed. And if there was any one motive stronger than another it was a determined hatred and hostility to the city of Omaha; that such hostility exists no man need deny to me, because for seventeen years I have seen it cropping out everywhere and that was the prime moving motive.

To be sure there were individuals who knew they could finger the coin and make money out of it, that did not move the masses, they were moved by the deep seated feeling of envy, jealousy, hostility to the commercial metropolis of the state of Nebraska. I do not care because I always knew, as I know now that wherever you place the capital, Omaha will come to it. She is now reaching out her feeler, and when that bridge is made over the Platte, she shall enjoy all the commerce that happens to concentrate at the city of Lincoln. I care not what you say or do, the commercial metropolis of Nebraska, that concentrated and congregated about the city of Lincoln. So that the thing being fixed here it is true, as my colleague says, we knew the motives, and after the thing was done and the triggers all set, and the thing passed and called, then the majority in that legislative body had the grace to call a convention of the inhabitants of the city of Omaha, who affiliated in their political views with the majority there, the republicans, to assemble at the capitol. And for three nights they discussed the removal; what would be its influence upon the party. They all anticipated hostile demonstration on the part of Omaha in regard to the removal. I know I made a statement which I would repeat now that everyone may know what it was. I said, "I would prefer if you leave us no capitol, rather to have a woman's school taught there for an entire year, than have the capital of the State of Nebraska." So would I. It was a constant torture. People thought it was to be Omaha's prosperity. Bellevue and Plattsmouth were ambitious themselves to become the capital. Nebraska City following, jealous of Omaha, supposed that with the capital removed from that city her prosperity in the race for permanent prosperity would be impaired thereby.

Mr. McCANN. Would the gentleman allow me to ask—Did not the Otoe county delegation en masse vote with the Douglas delegation in the fight at the last territorial legislature? And, Mr. Chairman, I would ask him—in that memorable controversy which has been alluded to here this morning did not a member of the Otoe delegation, co-operating and working with the Douglas delegation, make the motion which was to put ———————— in the chair, and by which the chairman of that legislature was taken out of the chair with a revolver and bayonet turned toward him?

Mr. ESTABROOK. Well, I was not mingling in that when the legislature ran away to Florence to escape the vengeance of the people from Omaha. My friend, I think, was the leading spirit in it. I was at a safe distance. But I will leave that branch, and the gentleman from Otoe may resume history to those particularly who think they can go into the detail of it. It has a great deal that is entertaining and interesting and beautiful. Nebraska City always exhibited hostility toward Omaha because she was too near the southern line, and she believed Omaha without the capitol would be less successful and by its removal to Lincoln, Nebraska City would be more successful. Now, sir, we are assembled here in the capacity of a constitutional convention. If we have any one duty more than another to perform it is to make fundamental law —this is indeed our legitimate duty —to make fundamental law; to lay down fundamental rules and principles. What is fundamental law? Why, sir, it is law that shall remain permanent; it is that law that shall have for its characteristics, permanence and perpetuity upon its face at least. And it is an exception to the rule, and not at all legitimate, and not strictly proper either, for a constitutional convention to make anything which is not of a permanent character. We make the judiciary, and we make it permanent. We provide for the executive government and this shall be permanent. Now how is it in regard to the provision for the location of some place where the inhabitants may be directed, where the archives of the state may always be found, where the representatives may always find a place and field for labor; where the person pursuing the fugitive from justice may always find the proper officers to sign the requisition?

It is said that the location of the capital at this place has done wonders to develop this portion of the state. It may be done, it has been done. The portion of the state would have been settled anyhow; but I know to my satisfaction, it has done much to develop this portion of the state. But be it remarked it was not simply the location of the capital here in the first place. It was the location of the capital, coupled with the provision that all the state buildings as well, should be placed here. And that circumstance it was, too, that made it peculiarly a success.

Now, then, you propose to fix some period, say ten years, when this may be removed; or, in the first place, the fact will be an inspiration to the people of Nebraska that at the expiration of that time, you shall remove it, and it will be the belief of the people that it may be removed, and there will be strong doubt about the commencing of other buildings at this point. Do you propose to remove the university? I suppose the idea of the architect at that time was that the university should tumble down and become a mass of sand as did the Omaha asylum. But another asylum is in contemplation as well as other state buildings. Now, if you increase the provision that has in contemplation the removal of the capitol what do you propose to do? Leave the balance of the state institutions here, or take them along with you? Now, then, this begets another thought. Upon what principle should you deal with this capital question. It has been regarded as a useful instrument to develop the resources of other points. And my friend from Otoe seems still to regard it in the same light; having been located here, and also to desire to wheel it around to some other point and have a like purpose effected there. Keeping it on wheels constantly. If the object is to develop cities and towns by the relocation, then that is the direct theory, but with it you have to have the retinue of other state buildings or else it is of no account. It seems to me the true theory of the location of a capitol should be to find some place wholesome and accessible, and where all could reach it with convenience and dispatch, and there let it remain. Now, this point is not today, the geographical center of this state. Omaha is the most accessible place today, and, to every man, that is a majority, that will ever have occasion to visit the capital the most suitable place is Omaha. How many come through Omaha to reach Lincoln? How many that live—for instance those who represent Otoe— find their way more conveniently there because it is nearer than here. So upon every portion of the river border to the Kansas line it is more convenient than here. But you have taken and placed it here. You have induced settlements here; it has stimulated emigration to this point, and as my friend Mason says, it has been here so, so it ought to be in other places. What! do you propose, men shall come here and bestow their capital and energy because you have located the institutions of Nebraska here, and then to betray that confidence they have had in you by either doing the act of removal or holding out the inducements and trusting there may be a removal? What kind of faith is that? And then, again, at the suggestion of the gentleman from Lancaster, can you perform the cheat more than once? No, sir. In my opinion there should be some permanence about a capital, it should at least be upon paper that it should be permanently fixed here, as any of the other provisions we send before the people. It seems to me that as far as the constitution itself goes, there should be no suggestion of a change. I have known something of the history of the capital. In that state an attempt was made to locate the capital permanently, which failed. How will it be here? Why, sir, if a member of this legislature is not properly treated at his boarding house—if he is not fed on pickles and preserves, or if his washerwoman don't sew the buttons on his shirt, in goes a proposition to remove the seat of government. He can keep up a continual excitement among the people of Lincoln by threatening to remove the capital. It is a good thing to apply "to call back lost dogs, cure burns, remove splinters, etc." (Laughter) But, sir, this matter assumes a different aspect in my mind. Fix ten years if you choose, and at the end of ten years the capital may be removed, and in consequence certain valuable improvements are not made at this place which perhaps would be, otherwise. I go against striking this proposition out but if a section can be made providing that it be located here until the people want the capital removed, I will favor it.

Mr. MASON. Mr. Chairman. My friend from Douglas (Mr. Estabrook) is opposed to change in these old institutions but if a remote refference is made to a female, or any changes suggested with regard to our political affairs, he is ready at once. Sir, I speak for the majority of the delegates who come from the different parts of the state and we hurl back with scorn the imputation that we are jealous of the growth and prosperity of Omaha. No, sir! Every delegate here takes a just pride in her growth, and her wealth. Everything which tends to build up the state, meets with my cordial approval. And, sir, we are proud of Omaha and her growing importance. Nature and the government have given to her the great Union Pacific railroad. We are glad. We take pleasure in making her the great city of the west instead of Council Bluffs, or any other town. We glory in this sir, and it comes with ill grace for any gentleman to stand up here and say we are jealous of her prosperity. No, sir, we take glory and pride in the broad developments of the state which results from this. We, sir, would be just with her and just with other interests of this state. It was not that we were jealous of Omaha that we were anxious to remove the capital, it was because she was not near enough to the center of the state. Today, sir, the capital of our state is made accessible to the people of the north, south, east and west by those civilizers of the world—the railroads. I am surprised that the gentleman should cast reflections upon other portions of the state that they were jealous of the prosperity of Omaha. No, sir, we hurl the accusation back. Show us how we can help you develop Omaha, and there is not a member upon this floor who will not do it. I hope, sir, that it never again may it be said the people of this state stand jealous of the greatness of any city within her borders. We say to day that in those things which go to make a state rich in agricultural resources, we, of this portion of the state, cannot be excelled and we are willing to allow Omaha all the advantages she enjoys. We have been asked, Mr. Chairman, how many states in the Union have a constitutional provision of this character, and the member from Cuming (Mr. Stevenson) said no state in the union had inserted such a provision in her constitution. Now, sir, the gentleman has not examined into the matter very closely. Ohio, Indiana, California, Massachusetts, South Carolina, Tennessee, West Virginia, Texas, New Hampshire and Kansas, all have this provision in their constitutions, and why should not we do this right and proper thing. My friend from Douglas, (Mr. Estabrook) says: That if he or I should come here as members of the legislature, and our washerwoman did not see that buttons were properly sewed on our shirts, we would get up a little excitement by saying that we would remove the capital from Lincoln. (Laughter.) What argument can be urged against this proposition? Not one, sir. except that it should be left to the people. Why, sir, we propose to submit this provision to the people in the constitution, and we propose to say that the people alone shall speak in regard to the removal of the capital of our state. One word more, and I am done. Sir, I cannot easily pass by this insult to my constituency, and the constituency of every gentleman, which is contained in the charge made against us that we are jealous of the rising greatness of any portion of our state.

Mr. ESTABROOK. You did not understand me to say such things exist now. I spoke of the feeling that existed in old times.

Mr. MASON. I understood the gentleman to say that my constituency would get up in the middle of the night to cast a vote against Omaha. Let me tell the gentleman that the people south of the Platte have got up in the night, before now, to help Omaha. But the time is coming when a great city will be built up out further west. When four lines of railway run from the east to the west crossing the little Blue converging with four lines of railway bearing their golden burden to the town to be there situated, with another crossing from the south and traversing the state, all bringing rich commerce to this center of population and wealth, then, sir, perhaps there will be a town at which our capital should be located. And, sir, this may occur in the immediate future. I would not put this capital on wheels. I am one of the few that never owned a lot in Lincoln, but I urge the locating of our capital here, because I think it just and right. If the time shall come when we deem it to the general interest of the state to vote for the removal of the capital to some other point, I shall vote for it, not because I am jealous of Lincoln, but because I think it just and right to do so. It writes in the constitution these words that say to the political elements and political agitator "peace be still," for ten years at least. It writes the magic words that shall quiet much dispute, the words that shall secure the people of the state against those who would grow rich through the coffers of the state. It is for this that I urge the committee to adopt this amendment offered by the gentleman from Douglas (Mr. Boyd).

Mr. ABBOTT. Mr. Chairman. I don't propose to make another speech, but do propose to confer upon the legislature special legislation for the removal of the capital. I will offer the following:

"The capital of this state."

Mr. MAXWELL. Mr. Chairman. I was absent, during this discussion, this morning on some business. Now, I understand the discussion has taken a somewhat wide range. I am free to say, while I have not taken any part in this discussion, yet at the time of the removal I was in favor of it; not out of any jealousy or unfriendly feeling towards Omaha. I thought it would not injure Omaha, but might benefit some other portion of the state. I know of no such jealousy in Cass county against Omaha that the gentleman from Douglas (Mr. Estabrook) refers to, there never has been any such feelings of the citizens of Plattsmouth. I think there is not a gentleman in the state but is glad today that the capital was removed, the citizens of Omaha as well as other persons in the state.

Mr. SPRAGUE. Mr. Chairman. I shall vote for the striking out for this reason. I think that the removal of the capital from Omaha was more on account of the opposition by the citizens of Omaha and sir, I believe that the same effect will be gotten up here. I am in favor of retaining it at this place, but if you now vote for the establishing of it here permanently it will only raise opposition against it. This very discussion will agitate the whole people. I shall vote to strike it out and permit the matter to sleep and rest.

Mr. MOORE. Mr. Chairman. I had settled down into a kind of delicious quietude on yesterday, upon the supposition that we would get through and would get home before very long, but to quote from the Bible again, "In stocks this shadow of a shade"—

Mr. BALLARD. That is not in the Bible.

Mr. MOORE. I would like to know where that mule that they have kicked, is?—("Gone where the woodbine twineth.") Well, if I ever get there I hope I shall not see the mule. The next question is where this Omaha is? I have heard of a tribe of Omahas, but they steal and I don't like the steal part—(Laughter.) I hope the gentlemen won't laugh at me for I don't know everything. Now, if the gentlemen will withdraw their motion to strike out, I will give them something on this matter that I think will suit them: It is this, "The capital of the state shall remain at Lincoln until the year 2,000, after which time it shall be removed to the city of York where it shall remain until the year 3000."

Now, Mr. Chairman, I am in favor of this for many reasons; first on account of these railroads that have been built to Lincoln. I hate to grieve an orphan child, and they are orphans, because you know railroads have neither father nor mother. Next I believe the capital should remain at Lincoln, because of the large amount of land selling around here. Persons are speculating on this land and it would disappoint them if the capital was removed, for they would thus lose on it and their poor wives and children would suffer, and I don't want to disappoint anybody, or see anybody suffer, so I am in favor of keeping the capital here until these speculators get their land sold. Again, I want it to remain here for the gravest and saddest of reason, it is the grave yard, the burying place of the people's money and land. Here they have followed to its last resting place a great many acres of land and a great many dollars of the people's—the dear people's money and I hope the capital shall remain here so that we may have the state officials here to guard this sacred spot. Now, sir, *I am in favor of moving it to York* after the year 2,000 for this reason, that we suppose the millenium will start about that time and it is proper the capital should be moved to a moral, intelligent community, that is the original garden of Eden, it is there Adam lived and with the exception that the trees have been cut down and destroyed, there is hardly one left, but you can see the old flower beds still exist and the old flowers she used to plant and tend with her own hands, and one of my neighbors digging a well discovered the identical core of the apple that they ate, and the reason they know it is, it is reported that they had some kind of a family difficulty previous to the eating of the apple, and that he hit her a little slap in the mouth and knocked out one of her teeth, and to this day there is the mark of the absence of that tooth.

Mr. ESTABROOK. I would ask if you have the original Satan there?

Mr. MOORE. No, sir, he has moved to Omaha. (Laughter) For these reasons I go in for locating the capital here until the year 2,000.

The CHAIRMAN. The question is on the motion to strike out.

The committee divided and the motion was not agreed to.

The CHAIRMAN. The question is on the motion of the gentleman from Douglas (Mr. Boyd) to add until the year 1880.

Mr. KIRKPATRICK. Mr. Chairman. I hope this amendment will prevail. I hope the provision will be left as it is here reported by the committee. I think if gentlemen will reflect one moment they will see the propriety of leaving it as it is. I see no reason in putting restrictions on this constitution.

Mr. STEVENSON. Mr. Chairman. If there is anything left in this article about the capital, if there is any clause put in this constitution in regard to this, I am afraid a majority of the votes in the seventh district will be cast against it.

Mr. ABBOTT. I would like the words "1880 and thereafter" stricken out.

The amendment of Mr. Boyd was agreed to.

Mr. HASCALL. I move that the words "seat of government" be stricken out and the words "capital" inserted.

The motion was agreed to.

Mr. BALLARD. Mr. Chairman. I move to strike the section out and submit it as a separate article, for the reason that I know it will create votes against the constitution.

The committee divided and the motion was not agreed to.

The CHAIRMAN. The question is on the adoption of the section.

The section was adopted.

Mr. MYERS. Mr. Chairman. I move that the committee rise, report the bill back to the convention and recommend its adoption as amended.

The motion was agreed to.

Mr. MANDERSON. Mr. Chairman. The committee have had under consideration the report of the Committee on State Institutions and Public Buildings, have adopted sundry amendments, and recommend the adoption of the article as amended.

Leave of Absence.

Mr. BALLARD. Mr. Chairman. On account of sickness in my family I ask leave of absence until Tuesday noon.

Leave was granted, NEM CON.

Mr. WILSON. I ask leave until Monday noon.

Leave granted, NEM CON.

Mr. CAMPBELL. Mr. President. I ask leave of absence until Monday noon.

Leave was granted.

Mr. ESTABROOK. I move that the report be accepted and the bill taken up in convention.

The motion was agreed to.

Mr. MANDERSON. I ask leave of absence from today noon until Monday at two o'clock.

Leave granted.

Mr. MASON. Mr. President. I desire to say to the convention that when I left home, my family was sick. I hear they are no better, and I ask leave of absence for an indefinite length of time. It is not for the purpose of being away, but I felt I was neglecting the first duty of life when I came up the last time, and if I am not required at home I shall not remain. But I do not want the sergeant-at-arms coming after me.

Leave granted.

Adjournment.

Mr. ESTABROOK. Mr. President. I move when we adjourn tomorrow, it be until Monday at noon.

Mr. MAJORS. Mr. President. I am not in favor of the motion to adjourn tomorrow till Monday at noon, for the reason that there are a number of us who cannot get home, and I think the gentlemen who live so convenient, and can, by using up a day's time, get home, should remain with us, so that we can accomplish this work. I think a day is very important now when there is nothing to pay our expenses.

Mr. HASCALL. I hope this will not elicit any discussion. We can all vote our sentiments. I call for the ayes and noes.

The ayes and noes being demanded the secretary proceeded to call the roll.

The president announced the result, ayes, 18; noes, 24; as follows:

YEAS.

Abbott,
Boyd,
Campbell,
Cassell,
Estabrook,
Hascall,
Kenaston,
Lake,
McCann,
Mason,
Manderson,
Maxwell,
Myers,
Newsom,
Reynolds,
Scofield,
Towle,
Wakeley.—18.

NAYS.

Ballard,
Curtis,
Gibbs,
Granger,
Griggs,
Kilburn,
Kirkpatrick,
Lyon,
Majors,
Moore,
Neligh,
Philpott,
Price,
Robinson,
Shaff,
Sprague,
Speice,
Stevenson,
Stewart,
Thummel
Thomas,
Tisdel,
Vifquain
Weaver.—24.

ABSENT AND NOT VOTING.

Eaton,
Grenell,
Gray,
Hinman,
Ley,
Parchin,
Parker,
Wilson,
Woolworth,
Mr. President.

So the motion to adjourn was not agreed to.

State Institutions and Public Buildings.

The PRESIDENT. The secretary will read the first section and then the amendment proposed by the committee of the whole.

Mr. BALLARD. I renew my motion to strike out and submit as a separate proposition.

Mr. KIRKPATRICK. I rise to a point of order. The report comes from the committee of the whole and has never been before this convention and acted upon. The proposition now is to take this report and submit it as a separate article. Is it proper?

The PRESIDENT. The motion is proper.

Mr. WAKELEY. Suppose the motion should prevail to submit it, is it beyond the reach of the convention to change the proposition, if the proposition is perfected before the vote is taken? You have taken no vote upon it in the convention.

The PRESIDENT. I would say that this is on the motion of the gentleman from Washington, (Mr. Ballard.)

Mr. WAKELEY. I know. But it seems to me that the convention should first agree to conform to the proposition as it comes from the committee of the whole. Then the question comes shall we engross it, and then say it shall be a separate proposition?

The motion of Mr. Ballard was not agreed to.

Mr. PHILPOTT. I move the adoption of the article.

The motion was agreed to.

Engrossment.

Mr. MYERS. I now move that the article be engrossed for a third reading.

The motion was agreed to.

Committee of the Whole.

Mr. MAXWELL. Mr. President. I move we resolve ourselves into committee of the whole upon the report of the committee on Rights of Suffrage.

Mr. McCANN. Mr. President. I wish to call attention to the fact that the committee on finance and revenue should come up. I gave way to the report of committee No. 22. I wish to give way now to my friend the gentleman from Cass (Mr. Kirkpatrick) for the consideration of his report which will take but a few minutes, I think.

Mr. KIRKPATRICK. Mr. President. This report has been acted upon by the committee of the whole and referred back. The convention disposed of this report yesterday, in adopting the report of the legislative committee, and I thought perhaps it would take but a few minutes to dispose of this report, as there is now but one section to act upon.

Mr. MAXWELL. I give way Mr. President.

Mr. KIRKPATRICK. Mr. President. I move we resolve ourselves into committee of the whole for the consideration of the report of committee No. twelve (state, county and municipal indebtedness.)

Mr. HASCALL. Mr. President. This report cannot be disposed of in less than several hours as it is now within 20 minutes of twelve o'clock, we can do nothing in considering this important report before our hour for adjourning. We had better adjourn and meet at half past one.

Mr. KIRKPATRICK. I withdraw my motion.

Adjournment.

Mr. McCANN. Mr. President. I move that the convention do now adjourn until Monday at two o'clock p. m.

The yeas and nays were demanded, the secretary proceeded to call the roll.

Mr. MASON. (When his name was called) Mr. President. I wish to explain my vote. I was left here from Saturday to Monday one time, and I was very uneasy because I had nothing to do. I thought then if it came to a vote again, I would vote against an adjournment. I vote no.

The president announced the result—ayes, 12; nays, 27—as follows:

YEAS.

Abbott,
Boyd,
Campbell,
Cassell,
Hascall,
Lake,
McCann,
Maxwell,
Myers,
Newsom,
Philpott,
Scofield.—12.

NAYS.

Ballard,
Curtis,
Gibbs,
Granger,
Gray,
Kenaston,
Kilburn,
Kirkpatrick,
Majors,
Mason,
Moore,
Neligh,
Price,
Robinson,
Shaff,
Sprague
Speice,
Stevenson,
Stewart,
Thummel,
Thomas,
Tisdel,
Towle,
Vifquain,
Wakeley,
Weaver,
Wilson.—27.

ABSENT AND NOT VOTING.

Eaton,
Estabrook,
Grenell,
Griggs,
Hinman,
Ley,
Lyon,
Manderson,
Parchin,
Parker,
Reynolds,
Woolworth,
Mr. President.

Mr. STEWART. Mr. President. I move we adjourn until half past one o'clock to day.

Mr. HASCALL. I move that the legislative article be made a special order for 2 o'clock Monday.

Mr. MASON. Mr. President. I hope there will be no special order made. While I am exceedingly anxious that these articles shall be submitted to the Committee on Revisement, yet I am not in favor of making special orders of any of them.

Mr. HASCALL. Mr. President. I make this motion in order to facilitate business. After we have considered this bill so far as we can in committee of the whole, the committee on legislative apportionment will offer an additional section.

Mr. KIRKPATRICK. Mr. President I protest against rushing these things in the committee of the whole. I hope there will be no special orders adopted in the future.

Mr. SPRAGUE. Mr. President. I hope this motion will not prevail and for this reason, there has been several amendments tacked on this that I am opposed to, and I hope during the absence of these gentlemen to get this thing fixed up all right.

Adjournment Again.

Mr. NEWSOM. Mr. President. I move to adjourn until half past one.

The motion was agreed to.

So the convention (at eleven o'clock and forty-seven minutes) adjourned.

Afternoon Session.

The convention met at one o'clock and thirty minutes, and was called to order by the president.

Resolution.

Mr. STEWART. Mr. President. I have a resolution.

The secretary read the resolution, as follows:

Resolved, That this convention adjourn sine die on Tuesday the eleventh instant at eleven o'clock a. m.

Mr. VIFQUAIN. I move to lay the resolution on the table.

The motion was agreed to.

Mr. BOYD. Mr. President. I have a resolution.

The secretary read the resolution, as follows:

Resolved, That one hundred copies of the report of the legislative committee as amended and adopted by the committee of the whole, be printed for the use of this convention.

The resolution was adopted.

Committee of the Whole.

Mr. McCANN. Mr. President. I move the convention resolve itself into committee of the whole for the consideration of the report of the committee on Revenue and Finance.

The motion was agreed to.

Revenue and Finance.

So the convention resolved itself into committee of the whole, the gentleman from Douglas (Mr. Lake) in the chair.

The CHAIRMAN. Gentlemen of the committee, you have referred to your article No. 9 as reported by the committee on Revenue and Finance. What is the pleasure of the committee?

The secretary read the first section, as follows:

Section. 1. Taxes may be rightfully and equally levied upon the property of the citizens, to insure the protection of life, the security of person, property and character, and to attain these objects, the legislature shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property; such value to be ascertained by some person or persons to be elected or appointed in such manner as the legislature shall direct, and not otherwise; but the legislature shall have power to tax peddlers, auctioneers, brokers, bankers, merchants, commission merchants, showmen, jugglers, inn keepers, grocery keepers, liquor dealers, toll bridges, ferries, insurance, telegraph, and express interests or business, vendors of patents, and persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time directed by general law, uniform as to the class on which it operates.

Section one was adopted.

The secretary read the next section, as follows:

Sec. 2. This specification of the subjects and objects of taxation shall not deprive the legislature of the power to require other subjects or objects to be taxed in such manner as may be consistent with the principles of taxation fixed in this constitution.

Section two was adopted.

The secretary read the next section as follows:

Sec. 3. The property of the state, counties, and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery, and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law. In the assessment, real estate incumbered by public easement, any depreciation occasioned by such easement, may be deducted in the valuation of such property.

Mr. MASON. Mr. President. I move to strike out the word "religious" in the third line.

Mr. MASON. The reason of my making this motion is we have a memorial presented to this convention by one respected and honored branch of this people. And there is another reason why I do it. The man or society which worships in the humble hovel or the school house, as many do, ought to receive and enjoy the same legal exemptions and privileges that enure to the rich and the opulent. The rich society that worships in a church, which is adorned and made beautiful, lives in luxury and wealth, can afford to pay. There is no reason why it should not. I think it is wrong to exempt any religious denomination from the ordinary burden of taxation. I have talked upon this subject somewhat, and have conversed with many leading men of different religious denominations; and I have not yet met one who does not approve of this memorial presented by the Methodist conference from this state, in general assembly. And I was requested, when home, by not less than three prominent men, one a presiding elder and one who was recently stationed at my place, to urge this matter before the convention on behalf of this society, and for these reasons I make the motion, and for the further reason that it meets my hearty approval; not that I would do anything in the world to injure or cripple those various denominations. But I would put them all on an equal footing before the law, and have them subject to general taxation.

Mr. NEWSOM—I am opposed to the motion of my colleague to strike out the word "religious";and I am so, for this reason among others, that I do not believe it is right and proper, nor expedient for the state to undertake to burden directly or indirectly so important an institution within its borders as a religious institution may be. If the church, held for public worship, paid revenue to the country, or if it paid its worshippers any revenue, then I think it would be proper to tax it; but, sir, it does not pay any revenue. On the contrary in many instances, churches are drains upon the community in which they are located. I imagine if my colleague was familiar with the workings of churches; if he shouldered any of the burdens, or was connected with one that was burdensome, that he would not be in favor of taxing. Whether you make that burden light or heavy, they are a burden to the people who worship in them. I imagine I understand the motives prompting the gentlemen in the Methodist and other churches for making this move to tax churches. It is for the purpose of striking at one particular denomination and no other. It is a move aimed at the Catholic church. While I am no Catholic and take no part in their creed in any respect, yet I believe all should be on the same footing. In order to put them on the same footing, the Methodists propose to tax all churches. They are dead capital and it is a mistaken idea. I do believe it would be proper to tax a church organization that held property for the sake of revenue. But never let churches be taxed as our property is. Now, sir, if this shall be so amended that it would exempt the church property held for public worship and used for that purpose alone I would favor it, but when a church holds property for the sake of revenue, I think it ought to be taxed. And I hope this motion to strike out the word "religious" will not prevail.

Mr. TOWLE. I hope sir, that the amendment to strike out the word "religious" will not prevail. I see no reason why it should, but I see many reasons, or think I do, why it should not. No institution in this country of a religious character ought to be taxed. Had there never been any religion or Son of God upon this earth to throw His gems of truth and religion, there never would, in my opinion, have been any civilization to this day. And this continent would have been reveling in its primeval condition and never would have emerged from it. We have, in our town, a practical exemplification of this if adopted. We have strained ourselves to the utmost to build Catholic, Episcopalian, and Methodist churches. Some are in course of construction. They are on valuable lots, and but a few years will roll by ere these lots and property will become valuable. These churches are free, and the character of the religion is that which does all men good. There is no money charged at the door; all are free. And, sir, after having drained ourselves to the utmost, and yet remain in debt, is it right the state should ask us, in building up and creating a religious sentiment upon which is based the laws of progress of our state, a taxation? Reference has been made to the Sisters of Charity. We all know, Mr. Chairman, that when the civil war was sprung they were ready to alleviate the distress of mankind. These angels of mercy were upon every field of battle, bathing the wounds, and binding the limbs, and endeavoring to keep down the woes and sufferings of our soldiers. I believe, sir, it would be unchristian and contradictory to the spirit of the age to strike this out and I hope it will not be done.

Mr. STRICKLAND. Mr. Chairman. I have some thing to say. There is a good deal of good sense in the proposition of the chief justice. Almost every people in the world have a religion of their own. I believe that religion is a matter of education. I do not say anything against religious people. I don't believe there is a religious sect in the state but what are doing much good. Will the gentleman say we should not tax the property of Mormons? There are a large number of this class of people in our state and they own property here to the amount of about $150,000. If the gentleman carries out his idea, he would say, "don't tax them for they are a religious people." The Chinese may come here in large numbers and erect costly pagodas; would he tax them? The Presbyterian board of Foreign missions was organized in the United States about 108 years ago. They own property in this state today that is worth $200,000. They own 320 acres of land near Bellevue, which is worth thousands of dollars.

Mr. MASON. I withdraw my amendment, I desire to offer another. I wish to insert after the word "school" the following: "Purposes, church buildings and the lands whereon they are located used exclusively for the purposes of religious worship in value not exceeding five thousand dollars, and public cemetery grounds." At some time in the future I will give my reasons for offering this.

Mr. STRICKLAND. If we exempt the property of the Presbyterian board of foreign missions, we should exempt the property of the Mormons also. I don't intend to speak of the Mormons with disrespect. I say this immense property of the board of foreign missions should be taxed. However,, as the gentleman from Otoe (Mr. Mason) has introduced a panacea to this, I will not talk much farther about this. I know that the Methodist church in the city of Omaha has grown rich by the property the church owns in that city. This property is continually increasing in value, and I think it should be taxed. The property I have spoken of as belonging to the Presbyterian board of foreign missions, situated near Bellevue is constantly growing in value. It was given this Board by the United States, because they were the pioneers among the Omaha Indians. It is worth more today, than any ten farms in the state. It is said that this board of foreign missions has made $16,000,000 since its organization. It is nothing more than a speculation. I think it is a wise and just provision that the gentleman from Otoe (Mr. Mason) offers. If a little church is built by contributions gathered from the members, I would be in favor of having it exempt from taxation, but I am decidedly opposed to exempting rich societies from paying taxes on their church property.

Mr. MASON. Mr. Chairman. I made a motion to strike out, after the word "school." My reason for this, Mr. Chairman, I think needs a few words of explanation. I regret that I should be understood as reflecting upon any,church, but if any of them are hit, they are the churches I meant to hit, and, Mr. Chairman, I am free to say that I think those men who worship in God's temples, possess more religious sentiment farther than those who repose upon their cushions of damask on Sundays, and listen to the music of the organ or well rounded sentences from the lips of highly educated men. Now, sir, why should a large church hold exempt from taxation $100,000 worth of property, while a more humbler band of worshipers worship in a house which cost less than two thousand dollars? Is it right that so much property should be exempted? An exemption of $5,000 will cover most of the churches in the state, outside of our large cities. I ask you gentlemen who come from the rural districts, how many churches you have that cost that much? I know of one church in a little town on the river, in which a rich man put a memorial window bearing his name which cost $1,500. Shall the humbler individual who owns a small farm upon which he supports his family, be taxed, while this church, which is a monument to the wealth and position of this rich man, shall be exempt from the tax gatherer's power? No, sir, this should not be. I would exempt a reasonable sum, Mr. Chairman, and if $5,000 is not enough, make it $8,000, and if that is not enough make it $10,000; but I think $5,000 is a liberal exemption. The little church where my family worship, and where my children attend Sabbath school cost less than $3,000. Another thing I regretted to hear, and that was the remark of my colleague (Mr. Newsom) to the effect that if I contributed to the support of religion, I would support the proposition. If the gentleman will go back and review the history of the little church where my family worships he will find that, up to the time the church refused to offer up prayers of thanksgiving to God Almighty for the restoration of peace and the destruction of slavery, I had contributed liberally to the support of that church, but when this refusal to return public thanks to God for bringing peace to our country, and destroying the institution of slavery, I withdrew from the church ("Good, Good.") I would not, Mr. Chairman, make allusion to this, had not direct reference been made to myself. I regret, sir, that such allusions were made, and I must be permitted to say that in as far as I have means, it shall be my pleasure to contribute to the building up of churches. Then, sir, I regret that such allusions are made and I have to say, that so long as I have means I will contribute all in my power to the building up of this church. Another fact and I am done. There is in New York city one institution alone that holds $13,000,000 worth of property exempt from taxes under a provision like this. And in St. Louis it appeared in the legislative discussion that one society owned $7,000,000 exempted, and that too in the very heart of that great city. Then, sir, if we come down to my own town, I could name a denomination, which is wealthy in its membership, owning considerable land in my county which stands deeded to the church in its corporate capacity. Those lands under this provision if it remains as it is, may stand untaxed for generations to come. It is, sir, for evils like this that I speak, not, sir, to encroach upon the rights of any. It was unfortunate in connection with this church to refer to the late war.

First in the field, first in the hospital, first everywhere was the Methodist church of this country. That church sent more men to offer themselves as sacrifices on the altar of liberty than any other church, others have done well, but they have done more than well. It is for them I speak, for they have asked it and their request should not be taunted. They demanded that there should be none exempt and they can judge of religious wants better than I can. I promised more than one church to lift my voice to secure a liberal exemption for the church and I believe $5 000 is enough. I ask nothing more

Mr. NEWSOM. Mr. Chairman. I think it necessary to say, that for me alone, to my colleague (Mr. Mason) I did not mean to reflect on him. I have to say that his disconnection with the church was totally unknown to me. I will say that I am in favor of the amendment offered by my colleague (Mr. McCann) that is all I ask.

Mr. TOWLE. I move an amendment to the amendment by substituting $10,000 instead of $5,000.

Mr. KIRKPATRICK. Mr. Chairman. I see no reason why religious corporations who hold property for the purpose of making money should be exempted from taxes and again, sir, cemeteries should not be exempted where they belong to private individuals and used for making money. I think the Methodist churches have a right to make this demand in favor of taxing all property belonging to religious denominations. I am not here as the special advocate of any church. I have no connection in the shape of membership with any religious denomination. If I have any church it is the Methodist Episcopal. This Methodist church holds as much property as any church in the state. I know they hold a deal of property in Omaha which they rent out. They are willing to be taxed on this property. The gentleman alluded to a constitution adopted by Missouri during the rebellion, in which they said church property should be taxed and it was very unpopular. It was defeated by a vote of over 5,000 in St. Louis, solely upon the ground that church property was taxed. We all know that came from one certain religious denomination that owns five or six millions of property in that city not one fiftieth part of which is used for religious purposes. I think all this property ought to be taxed except for charitable purposes or worshiping congregations. Whenever money is made the property ought to be taxed.

Mr. THOMAS. Mr. Chairman. I think the substitute is better than the original amendment. I think cemeteries ought to be exempt. It is true there may be private cemeteries by which money is made, if we tax them how shall we collect it, can we sell them for the taxes?

Mr. MASON. Are you aware that there is a gentleman in Omaha making a fortune out of a private cemetery? Are you aware that a company is being formed in every town to make money out of a cemetery?

Mr. THOMAS. Would it be possible to sell a cemetery?

Mr. MASON. I would sell unsold lots until it was a resting place for the dead, and then I would sell the bones. On a critical examination I believe I like my original amendment better, because it puts in a public cemetery.

Mr. ABBOTT. I withdraw my substitute.

Mr. ESTABROOK. Mr. Chairman. This article seems to be an exact copy of the Illinois constitution. It seems to have been very thoroughly considered. I think the original article as it stands is just what we should have. I think it leaves the legislature at liberty to pass such laws as they shall see fit on the subject. I shall vote against all exemptions.

Mr. ROBINSON. Mr. Chairman. I do not believe in any exemptions whatever. I can see some reason for exempting public schools and public cemeteries, but I do not think it is very good policy to take money out of one pocket and put it in another; therefore I would exempt public property, but I see no reason for exempting the property of a religious corporation. I am not willing to confer upon the legislature the power to make any exemptions whatever. I see no reason why churches should not pay a tax like an individual. Now, I do not believe in fostering questions of such things any further than necessary. I think they are separate from the state machinery and should be so regarded. If there were such a thing as a state church, as in England, I would then think property should be exempted from taxation. Because it would be merely to take out of one pocket and place it in the other. As to this amendment, speaking specially of it, I think it is very bad. I think as it reads it provides that if their property exceeds a certain amount, it shall be exempted. Now, what does that mean? Or does it say it shall be exempted to a certain amount? This is a condition in the limitation, as I understand it. If the church had property to the amount of $10,000 it is not exempted, but if it has $5,000 then it is.

Mr. MASON. I will not insist on my amendment if the gentleman from Hall (Mr. Abbott) will insert the word "public" before "cemetery."

Mr. ABBOTT. That is the purport of my amendment.

Mr. TOWLE. There is something strikes me in this matter as being entirely wrong. I am constrained to believe there should be no limitation placed in here whatever. But, if there is, this section should be stricken out entirely and the thing left to the legislature according to the exigency of the times. The only argument used by the gentleman from Otoe is that one denomination has asked for this thing to be done. Let us get below the surface of this, if we can, and enquire what is the object of this innovation upon the general established rule, in regard to charitable and benevolent institutions. We find throughout the world, without exception almost, this rule, to exempt religious institutions; and how is it that a certain denomination now asks that this rule be reversed. It looks as if there was a motive in view—a jealous motive. If they are so desirous of taxation and will ask for it only on themselves, I am willing they should pay taxes. Now, sir, I have nothing against the Methodist Episcopal church. Both my parents are members of that church, but I say let us travel in the way civilization has traveled for the last five hundred years. It is not right, and I believe the sentiment of every man in this convention will be against it. I move to amend by inserting "$25,000" instead of "$5,000."

Mr. McCANN. I desire to state to the committee that in this article as originally drafted the committee had exempted church property to the extent of $10,000; but further, and after mature consideration, we agreed to strike that out unanimously, and leave the section as it now stands. I hope, Mr. Chairman, to remove any false impression which may have been made by the gentleman from Douglas, in a few words. It will be remembered by many members of this body that about twenty years since, long before I was on this side the Missouri river, the Presbyterian board of foreign missions, pushed the mission to the present site of Bellevue. Since that time they have expended alone, during my recollection and knowledge of the transactions of that board—for I have been a member of that board within the last ten years—$37,500 for missionary purposes to the Omaha tribe of Indians. And when these Indians removed to the Omaha reserve that mission school was moved there, and the general government said to the board of foreign missions, "If you will expend $37,500, we will expend a similar amount." And in accordance with such an arrangement the Mission school at the Omaha reservation has been maintained at great expense to the present board of foreign missions and the United States. Neither the Presbyterian, Baptists or Methodist Episcopal denomination, would desire anything more than a church building, and the ground upon which it is located exempted from taxation. If that board which, during the past twenty years, has spent a vast amount of money, and does not yet own any property elsewhere, asks to be exempt only from the lot upon which the building is located; I think it ought to be. I take it that a large body of men who have performed such service as this board, should not be made to pay a tax upon a little church building which may be located perhaps upon ground which the general government may have seen fit to give to the board. This board has spent $300,000 for missionary operations and closed upon the first of June with $29 in the treasury. Last year they were $40,000 in debt, and received $100,000 within a very short time, to pay off that debt and extend their operations. It may be that all other churches in the same proportion, some to a greater extent than others, are performing the same kind of labor, but, because they do, I take it that we, as a constitutional convention should not strike ont the word "religious," which I understand to be the church building and the ground upon which it stands; and the proviso of my colleague, the chief justice, limits that to the extent of $5,000, if you exempt at all, I would not favor any sum exceeding $10,000. Perhaps $5,000 is sufficient, but I hope we will not refuse to exempt property used for school purposes, or property used exclusively for religious purposes, from taxation. I say that we should not exempt private property which is used for cemetery purposes, from taxation. If I see fit to go into a company which lays out a piece of ground as a cemetery, I have no more right to be exempt from taxation on this property than on money I have invested in any other way. But I hope that whatever conclusion this committee may arrive at, church buildings and the lands or lots upon which they are built, will be exempt from taxation to the amount of $5,000 or $10,000, and I believe it is for the best interests of our state that all denominations should be exempted to that amount. The gentleman from Douglas (Mr. Strickland) has spoken of Mormons coming in and establishing churches. I say I would exempt their property when used for churches, the same as any other. I presume that the legislature may exempt this class of property from taxation, but it shall do so by general law. If the original section is not just what is wanted, I hope the amendment of my colleague, Judge Mason, may be adopted.

The CHAIRMAN. The question is upon the amendment offered by the gentleman from Richardson (Mr. Towle) to strike out $5,000 and insert $25,000.

Mr. WAKELEY. Mr. Chairman. I am opposed to meddling with this matter. It can be left to the legislature. I don't see the necessity of going into detail, and fixing the precise amount the legislature may exempt from taxation. No one seems to object to the general policy of exempting a reasonable amount of property that is used for the purposes. The only question, then, for us to consider is whether it is better to fix the amount to be exempted, or to leave the legislature to use its own discretion with regard to that point. We give that body power to exempt certain property, used for certain purposes from taxation, and I think it is better to leave the amount to be exempted, with the legislature.

Mr. ROBINSON. Mr. Chairman. It seems to me it is wrong to exempt property used for charitable or religious purposes. The principle of taxation is to tax all alike. When taxation is equal it is right and just and does no one harm. I see no reason why church property should not be taxed the same as any other property. They have just so much property tied up which does no one any good. In some of the states, this is a crying evil. It is not so bad in this state as yet. Now, what do you call "charitable purposes?" If I own a building and desire to give it to a religious society, I would call this a "charitable purpose." If this society rents the building and receives a large amount of money for it each year, I do not call that a "charitable purpose." If you tax small institutions, you do an injury if you don't tax large institutions. Say there is a church in this city that has property worth $25,000, another church has property worth $2,500. You exempt both and you do an injustice to the small church, but if you tax both you reduce taxation on the small church. I suppose there are but very few persons in the country who do not belong to, or attend or help support some church. I think if they are all taxed alike, that no injustice is done to any, but if you do not, then injustice is done to some.

Mr. WAKELEY. Mr. Chairman. I am satisfied to leave this matter to the legislature. We may discuss the subject for a week and come to no conclusion with regard to it.

The CHAIRMAN. The question is upon the adoption of the amendment offered by the gentleman from Richardson (Mr. Towle) to strike out "$5,000" and insert "$25,000."

The motion was not agreed to.

The CHAIRMAN. The question now recurs on the original motion offered by the gentleman from Richardson (Mr. Towle) to strike out "$5,000" and insert "$7,000."

The motion was not agreed to.

Mr. CASSELL. Mr. Chairman. I move to strike out "$5,000" and insert "$3,000."

The motion was not agreed to.

The CHAIRMAN. The question now recurs on the original motion of the gentleman from Hall (Mr. Abbott).

The committee divided and the amendment was agreed to.

Mr. MASON. Mr. Chairman. I have one other amendment to propose, after the word purposes in the third line, to insert "and may encourage agriculture and horticulture by a reasonable exemption of improvements."

I wish to say, Mr. Chairman, as the bill now reads these exemptions that have done so much to secure the planting of orchards and shade trees, and these trees have done so much in provoking rain, would be at an end. I think they should be continued. I do not know that I want to discuss this question. I do believe that the man who plants a half acre of trees does more for the state and more for the community, and more than many of your schools for the education of your children. I will also remark the agriculturalist is taxed on everything he has got but you go into a store where they say they carry several thousand dollars worth of stock, and you will find they are taxed only on several hundred dollars.

Mr. ROBINSON. Mr. Chairman. I offer this as an amendment.

"And may encourage horticulture and agriculture by reasonable exemption for live fences, orchards and forest trees."

Mr. MYERS. Mr. Chairman. I am opposed to this special exemption for the farmer or any other class in the community. I am of the opinion that the farmer is able to support himself, and there is enough benefit to him for planting these things without special exemption. Their lands and property are protected by the state and I think they ought to bear their share of the expenses. I shall vote against this sir, if I stand alone, because I like an independent man and farmer. As one of that fraternity I don't want this exemption.

Mr. GRIGGS. Mr. Chairman. I am in favor of it. The farmer who plants out trees benefits the whole country and especially in this country where we have none. Everything the farmer has is seen and he is taxed upon it, while the banker may have much not seen and not taxed. I believe the state ought to offer this inducement and I will support it.

Mr. ROBINSON. I intend to vote for this amendment for the same reason that I voted against the other, on the sole ground of public policy. I think in a country where trees are so scarce the policy has worked well and will, and it is a benefit to the whole community. The trees we have are becoming fast thinned out and this branch of agriculture is becoming very necessary. I suppose that the legislature will exercise discretion and that after the trees have grown to a certain size the exemption should cease.

Mr. MAJORS. Mr. President. I propose to stand by my friend from Douglas (Mr. Myers) on this question and do it on this principle. In the western part of Nemaha county where their property was exempted they said they could not build a school house, and they want that law repealed, and I think it is best that we have no such law.

Mr. McCANN. Mr. President. I hope the amendment will not prevail, and in giving my reason I wish to state that perhaps no man has done any more than the chief justice in this respect and yet he has never been exempted a dollar. I can say the same of Mr. Myers, Mr. Majors and myself. If this law is continued you will not only be prevented from building school houses, but, sir, from the running of the county machinery altogether presently. Under this law here comes a man with some of his neighbors who testify that they have planted so many trees and are exempted from their taxes, but when you come to go out, where you think you should find a beautiful forest you find only a few sickly trees. This, as my friend from Douglas (Mr. Myers) has stated, is special legislation. Do not let us permit that. If it is to my interest to plant a thousand fruit trees as I have done within a few months past, if it is to my interest to do so, I will do it and my property will sell for more money in consequence. Now, Mr. Chairman, if we are going to exempt property in this way, we can just tie up the hands of county officers. Those men who are now compelled to pay taxes upon their farms, just as you and I are compelled to pay them will come in and obtain an exemption. What will you do for the means to run the county government? We must have our internal improvements, court houses and jails, we must go on and bear the burden in the heat of the day while we are young and poor, while we may improve and beautify and render valuable this state of ours. We should pay particular attention to the planting of fruit and shade trees, in no way can we do more good, thereby influencing the climate as it has done in the past few years. But, sir, in my county and in other counties as I am informed by a number of county treasurers, the delinquent taxes will be greater this year than preceding years by fifty per cent. Our object is to fix the principle of taxation uniform and by so doing lighten the burden of those men who pay their taxes, but make all pay alike. The people of the state and the county officers are looking to this convention to so form this article that people will pay their taxes, and taxation instead of being increased shall be diminished. I hope the amendment will not prevail.

Mr. MASON. Mr. Chairman. It strikes me there are a great many reasons for this, there may be force in the objections urged to the proposition to some extent, but let us see to what extent they go, and let us look at this thing with a view of a few scientific facts. First, there is in France a place which for over a hundred years was the most productive province in the whole empire, lying along under the mountains, some eighty years ago the mountains had become denuded of timber, and then it became a barren waste, utterly unproductive. Under the fostering care of government, forests were planted, large forests, and the mountain side was covered with trees, and after sixty years timber had grown to such an extent that it is today one of the most productive provinces. When there was no timber no rain fell, none at all. I apprehend there is no old settler in the state, excuse the expression, but knows that the rain fall even along these border counties has been increasing year by year. This is true in Kansas. Why is this? It is simply the planting of forests, hedges, orchards and vineyards. Now, the man who makes two spears of grass grow where but one grew before is to the world a greater benefactor than the warrior with his sword, or the orator with his brain; he is a greater benefactor than the statesman who rules the states and rules over empires, because he himself has fulfilled the greatest purpose for which he was placed on earth, to beautify and adorn it. Now we do know that this has induced extensive tree planting, and right here I wish to relate a fact alluded to by the gentleman from Nemaha (Mr. Majors). I undertake to say there is no section of the country in all the state of Nebraska, I think I have travelled over it pretty well, that compares with what is known as the Illinois settlements, although settled less than five years, you can traverse thirty, sixty or eighty miles, with hedges and groves on every farm and an orchard on every 160 acres and it does a man's soul good to go through that settlement. How does this happen? They took advantage of this exemption. Well, thank God they did, it advertises your country more than aught else besides, and I would give these poorer settlements that live further out on the border the same benefits these gentlemen have enjoyed; besides, independent of the public benefits, and I will not now delay to cite or read some statistics I have in reference to the matter under discussion, planting trees, modifying the climate, but in my judgment the man who plants these trees plants them not for himself alone, he plants them and they become agencies of the public good, they are general civilizers of children, with the bird's nests in the trees and their songs speaking God's beauty more than the roll of your locomotive and the noise of the railroad, and yet you tax me every year not less than thirty dollars to pay for these institutions and you will not exempt the man who has made the place vocal with God's songsters. I speak here today on behalt of the agricultural interests of this state. It is true I have planted some trees and some orchards and never did I claim a dollar exemption. Why? Because I might be able to pay my taxes myself, but I know of neighbors of mine that have planted orchards and trees that can scarcely shut winter out of doors from the children's feet, much less pay the burden of taxation, and sir, it is for them I plead with the committee, it is that you may not at one fell sweep wipe from the statute books these exemptions that have been the sovereign angels of progress of the agricultural interests of this state, and I beg of this committee to insert something of this character or I am afraid they will find out throughout the rural districts of this state and over the whole country that something of this kind has taken place; besides, Mr. Chairman, this whole matter is within the control of the legislature. Now where good has been accomplished like it has in the Illinois settlement alluded to by the gentleman from Nemaha. The legislature can say that after three or four years growth the exemption shall be removed, but you remove it all at once, and you withdraw that encouragement that has planted these groves made vocal by God's songsters. Further, I know of one man in my county who has set out 1,000 fruit trees this year for the exclusive purpose of exempting his place from taxation. I appeal to his committee if it is not better for this state by far that the thousand trees should be planted, than that they should remain unplanted, and I undertake to say they would have so remained for many years to come. but, sir, it is said this is not just. Let me say, in respect to this matter, that the agriculture of the state of Nebraska, pays more taxes in proportion to the amount of capital invested, in that interest than any other department of business in this state. Why, sir, when the tax gatherer comes around he calls on the farmer and asks, "How many hogs and horses, and head of cattle have you, and what agricultural implements and farming utensils?" And the farmer has noting he can disguise, if he wants to. Aye, not a thing. "How much do you own?" Go into my town for instance; and I think my friend from Otoe, the chairman of the committee, will bear me out that in one single instance—I think, perhaps, he was on a grand jury; I may be mistaken—when in a single day, in the town, the tax list was increased $70,000. Where did the large increase come from? The large increase came from the towns. The farmers had disguised nothing! but it was the town men, the bankers and the merchants and the rich men, who had covered up. And it was only through the business sagacity of that grand jury that it was unearthed. And let me say that you lose nothing by this exemption. I would be in favor of reaching this in another way; could I see my way clear to accomplish that result. Were I to legislate I should prefer to give premiums upon orchards, hedges, groves and farm improvements. But, sir, I am not. I have been in legislative bodies, and I know that while they refuse to give premiums, you can carry a moderate exemption. Now, it is for this purpose I move this amendment. Besides, this amendment is sent to me —or is suggested to me—I supposed that the exemption was in the bill till my attention was challenged to it. In looking over some letters I found a letter from the chairman of the horticultural society an intelligent man, asking for the incorporation of this provision in this article.

Now, I will tell you how I propose to make up this exemption. Up to the time of the meeting of this convention no homesteader ever paid a dollar tax, although many are rich and have vast improvements on their places. Now, to make up what we lose here, I propose to tax their improvements and the interest they have in that land. And, why? Gentlemen will answer me that the title is in the government. I admit it. They will answer me, "You cannot acquire the title to that land." I admit it. But what can you do? They have an inchoate interest in the land and may eventually acquire the title and when they consummate the pre-emption and acquire the title the tax law may be enforced, and if they have personal property the tax may be levied of the personality, and in this way the legislature will more than make up the deficiency arising from this reasonable exemption on hedges, orchards, and timber, and agricultural improvements which inure to the people of the whole state. Were I to legislate, I would go a step further. I would say that every road overseer in this state should take a certain portion of the money in his hands and plant trees by the roadside of every public highway over which he has supervision; and those trees should be public property for all time to come, and be protected by suitable laws. What would we accomplish? Every street would be shaded and every tree would be a home for birds with their nests, and the air would be made vocal by their music, to make glad the hearts of the children, and teach them in the ways of purity and of nature's truth. And since I cannot accomplish this here, I would encourage the planting of trees, hedges and orchards; because they are all public and not private benefit. What has made Otoe county rich? It is no other than that individual, J. H. Masters and his compeers and associates who have caused the planting of more trees and the enriching of the county more than any class of men in it. And I remember in the earlier days of this state, a man they called "Humbug Thompson," who sold trees, and lived in the western part of Otoe county; and now when I come into the neighborhood where he previously resided, I find every farmer has trees, hedges, orchards, etc. And I have often thought when I travelled through that neighborhood that he left his marks and footprints on the earth and nature with more distinctness than any other man, and the world was made better for his having lived in it, notwithstanding that he was much abused, and did not always pay his debts. But he accomplished great good for the country; and for these reasons and many more, I urge, I hope the agricultural interests may be promoted by leaving it in the power of the legislature to make reasonable exemptions for orchards, hedges, and trees, or at least provide that these improvements shall not be taken into consideration in the value of lands for the purpose of taxation. And if the evil exists in the settlement known as the Illinois settlement, the legislature can say that when the trees are of three years of age, or four years the exemption shall cease, and we get the benefits. For these reasons, I hope the motion to amend in this regard may prevail. I know there are thousands in this state today, who will oppose this constitution if you cut off all exemption. They will rally and say we prefer to preserve the power to accomplish these results.

Mr. McCANN. I will repeat what I have before said—that not a citizen of this state is more convinced than I am of the great necessity of planting trees. But I beg permission of the committee to read one of many letters which have been addressed to me as chairman of this committee during the last three weeks, and it will be seen by the committee that this matter of exemption throughout the state is a great, crying evil. A gentleman, whom I have not the pleasure of knowing who is a citizen of Cedar county writes me a letter, the contents of which, it has just occurred to me should be made known to this committee. I will read a portion of it:

"Sir—I take the liberty of addressing you to express the hope that in the new constitution taxation will be made equal, that all railroads and other corporations, and all classes of settlers and people must alike pay their just proportion, (according to a fair valuation of their property) of all taxes without any deduction or abatement, unless it be the exemption of religious and charitable institutions, etc. We think the legislature should not have power to vary from the rule of equal and uniform taxation of all kinds of property. Any other doctrine is, you know, essentially wrong, and anti-republican; and cannot be defended on any reasonable theory of a good government. I am told that great injustice results in this county on account of the exemption of a thousand dollars worth of improvements on farms from taxation by the laws of the state. Farmers well off, with valuable farms worth from ten to twenty-five dollars per acre now pay no more taxes on their farms than the man who has just bought of the United States his land for $1.25 per acre or $200 for his quarter section. The county treasurer here, lately informed me that not a single farmer in this old settled county paid any taxes on his improvements; that is that the value of all land; good prairie; was fixed by the assessor at $4.00 per acre; although some of the land had just been bought of the United States at $1.25, and some farms are worth, and cannot be purchased for

$25,00 per acre. Under the cover of this exemption and the elastic conscience of the assessor, property of the value of $25,00 dollars and property of the value of one dollar and a quarter pay for the support of schools, roads, bridges, poor, county and state expenses, etc., etc., the same tax. Gentlemen, what is this but downright robbery. What chance has a man who has just bought his farm to struggle along with such an unreasonable and unjust tax piled upon him. Gentlemen, I do hope our new constitution will make such a glaring wrong as I have above described simply impossible."

Now, Mr. Chairman, what I most fear is simply this—that if we go to work in special legislating and exempt one man for one class of property we will be led to exempt him from another class of property, and I can assure the committee that with the exemption of one county—Hall county where they are a little ahead—I believe every county is laboring under great embarrassments by want of funds in the treasury, for improvements by one manner or another. I believe the interests of the poor man, the poorest farmer in any one county in the state will be promoted by leaving this matter to the legislature.

Mr. KIRKPATRICK. I have nothing to say against the gentleman who wrote that letter, but I am inclined to think that he is not living in Nebraska, but is a large land holder, who lets his land lie here and he lives out of the state, and receives the benefit of it. I would like to ask the gentleman from Otoe (Mr. McCann) if he knows any gentleman who lives upon a farm, who is opposed to this exemption law? The gentleman is aware that under the present law a man has a certain exemption for improvements made upon his land. Does the gentleman think this is wrong?

Mr. McCANN. Mr. Chairman. I would state, in answer to the gentleman from Cass (Mr. Kirkpatrick) that I don't think this would be wrong, where the property holder is honest, but I beg leave to add that in my county, and in the gentleman's own county that exemptions are often allowed for $5,000 worth of improvements when there are actually not more than $1,000 worth of improvements.

Mr. KIRKPATRICK. Mr. Chairman. Sir, I desire no class exemptions. But I have this to say, there is no class of property that is so completely taxed as the farmer's property. The farmer is more closely assessed than any other class. Merchants make their own returns. They are required to list the amount of property invested in merchandise. The whole system of society rests upon agriculture. I understand that it is agriculture which gives business to your iron horse. If it were not for agriculture I am very sure that every other kind of business would not prosper. I know there are many bond holders who are not taxed upon their bonds. A farmer cannot avail himself of exemption in this way, because he has not the means. If there was any class exemption I would be willing to exempt the farmers. I have never claimed any exemption for the improvements made upon my farm. Now, a man is not always selfish in planting trees. He plants for his posterity, and for his children, and he adds to the wealth of the state. I say that people should be taxed only for the necessary expenses of carrying on the government. I believe if there is not some liberality shown, we will lose by it.

Mr. ABBOTT. Mr. Chairman. The gentleman from Cass (Mr. Kirkpatrisk) says that farmers pay a larger proportion of taxes than any other class of persons. I doubt this, very much. I know by reading our statutes that $1,000 worth of improvements on a farm calls for an exemption from taxes to a certain amount, and then again there is $100 exemption on every acre of trees they plant out.

Mr. MASON. Mr. Chairman. Suppose Mr. A plants out trees upon his land; he improves the land of the neighborhood making that of the speculator who joins him much more valuable. I say it is proper there should be an exemption from taxes in favor of the man who brings about this increased value. Sir, in my own county I know of a man who owns land adjoining land belonging to a speculator. He has improved his, and made the speculator's land worth $18.00 per acre. Now, sir, I know who the man is who wrote that letter which has been read to us. He owns farms in nine counties in this state, and the actual settlers are improving the land all around him making his hedges for him and increasing the value of his property, every year. Why, sir, if I go out upon these broad prairies and take up a section of land and improve it, don't I increase the value of the land of the speculator adjoining? This is the principle you propose to inaugurate that my orchard along side of a man's land is groaning with fruit and increases the value of his land one-half, yet you make me pay and don't make him pay a cent for that increased valuation. It is on the principle of even handed justice that I support this question. He who delves into the earth and grows beautiful forests and orchards, is as much an educator and christianizer as your church spire pointing towards Heaven bristling with texts of holy scripture.

Mr. MAXWELL. Mr. Chairman. We must remember this does not propose to exempt, but only to allow the legislature to pass laws for such exemption. It has worked well in the past, the eastern portion of the state under it is covered well with groves and now we want to carry this into the new and western counties. I have a number of trees on my farm but I never have claimed any exemption, but there are those in our state that need just such encouragement. We are paying out thousands of dollars today to encourage immigration to this state. Now if you set out these things there is nothing will encourage immigration more than this. The day is coming when we will not have a herd law in this state and when men will need these things to protect their stock in the winter. It is for the benefit of the speculator that it is sought to have this exemption stricken out, they will not improve their lands but let them lie until the improvements of the farmers around them increase their value and they get the benefits of this improvement.

Mr. KENASTON. Mr. President. There are one or two ideas with regard to this subject that I think is of interest. This exemption does not affect at present the expenses of the country very much but a few acres of groves or orchards on the farm, and that farm surrounded by a live fence increases the value of it. After a while this will not be necessary and then what is the result, the land is increased in value many thousands of dollars and then of course the taxes will be larger. It now gives the homesteader a chance to make improvements. I am a homesteader myself and I think we ought to have the privilege of this exemption.

Mr. SPRAGUE. Mr. President. I propose to give the reason for the vote I shall cast. Gentlemen who favor this proposition say that these improvements enhance the value of the land that surrounds them. Well if it does in fact is it not taxed in proportion to its value? Then sir, is not that land taxed for these improvements? I think so. Now, sir, I hold that there should be but one rule for taxes and that an equal one.. All property should be taxed just in proportion to its value, and whenever you adopt that rule and apply it in practice this argument in favor of this proposition falls to the ground. For another reason I am opposed to this principle, that is, from its working so far as I have been able to judge, it operates in favor of those who are best able to pay the taxes, and not in favor of those who are poor and unable to pay, for this reason, it is the man who has a number of broad acres who goes to work and plants his orchard and sets out his trees, he is exempted, but the poor man, the homestead man, who has but eighty acres and it is so difficult for him to get along, it is not he has the acres of trees set out. Now, sir, I have a farm and have taken pains to improve it by planting. I did it not with a view of the good alone that should redound to the benefit of the public, but it was for my own good, it was for my own purpose. I do not know but it might be well that you should say that a man's lands should not be taxed any higher by reason of these improvements put upon the land. I am opposed to exemptions. I have never claimed the benefit of the law.

Mr. THOMAS. Mr. Chairman. I am opposed to this amendment for the reason I think it is wrong in principle. I think the correct doctrine is contained in the first section of the article we have adopted. Now, if we exempt any property of the farmer we are not levying taxes on the people, we are taxing one portion of the community for the benefit of another portion, we are not levying taxes for the security of life, property person or character. It seems to me this principle is making a constitution for the benefit of a class at the expense of other classes. I do not see how this can operate for the benefit of the community. If it is true we could exempt property of farmers because by planting out trees they improve the whole country, is it not also true that if manufacturers are brought here they are benefiting the whole community? If a mill is established does not it benefit the whole community? It seems to me that if this principle is carefully examined it will be found to be incorrect.

Mr. PHILPOTT. Mr. Chairman. I am opposed to this because I think it unnecessary to incorporate this in the constitution. We have upon our statute books a law which provides for almost all included in this amendment. That law was passed under the present constitution. It as follows:

"Be it enacted by the legislature of the state of Nebraska, That there shall be exempt from taxation of the property of each tax payer, who shall within the state of Nebraska, plant and suitably cultivate one or more acres of forest trees for timber, the sum of one hundred dollars annually for five years, for each acre so planted and cultivated, Provided, That the trees on said land shall not exceed twelve feet apart, and shall be kept in a healthy and growing condition."

It is not the class known as agriculturists who are urging such an amendment to the constitution, but it comes from my profession. If the farmers want it I should think they would support it. I think it is better to leave this to future legislatures, they may enact such laws as they find may be necessary. Our representative body will be composed more of farmers, there will be a greater proportion of farmers in those bodies hereafter than we find here today, and I think we will have a better opportunity of learning the desires of farmers should we leave it to them. There was a matter referred to by the gentleman from Otoe (Mr. Mason). Speaking of a gentleman who had a farm by the side of another individual who had planted out forest trees, etc., and thereby had increased the value of the man's land up to eighteen dollars per acre. The chief justice did not tell us it was less before, but by reason of these trees planted the man's land was increased to eighteen dollars per acre, thereby he had to pay a greater amount of taxes, it will thereby encourage the people to plant forest trees. I believe they will do it for the beauty and sense of duty and because it is more value to them than the saving of fifteen or twenty dollars taxation. Suppose a great many farmers are exempted from taxation, how about the citizens in the city who own considerable property, will you make them pay a larger amount of taxation? The motto of this state is "Equality before the law." I believe this is wrong in principle and should not be adopted.

Mr. MASON. Mr. Chairman. I desire to withdraw the amendment I offer, and substitute the following: "For the encouragement of agriculture and horticulture the legislature may provide that the increased value of lands by reason of live fences, fruit and forest trees grown and cultivated thereon, shall not be taken into account in the assessment of such lands for the purposes of taxation."

Mr. McCANN. Mr. Chairman. I wish to address myself to the amendment offered by the chief justice. I do not know whether this Mr.Herrick is a bona fide farmer or not, if he is not, if he is a speculator, he has imposed upon me. I never heard of the man before and care not whether he be a farmer or not. One word in reply to the gentleman from Cass (Mr. Kirkpatrick). The gentleman and myself are both land owners in Cass county, we are both farmers, although he, from modesty, disclaims being one of the common farmers of this county. I must consider him one of the foremost farmers of that county. And I hold that the gentleman from Cass and I, pay a less rate of taxation upon our landed property in Cass county than any other class of citizens in the county or state. I hold that I, as a land holder, in Otoe county, and a farmer, pay a less tax upon my real estate in Otoe county than any other class of property; and the farmer of Otoe county and Cass county and through Nebraska, pays a less rate on his property than any other citizen in the state. It is true, and I challenge the gentleman to take his own farm or mine, his own land or mine, either in Cass or Otoe, and prove to the contrary. In my county, the average value per quarter is considered $800, and the average actual value of the land, is twice that sum. Now, sir, go into the city of Omaha, the town of Plattsmouth, Nebraska City, Brownville or Lincoln, and the property holder pays a higher rate of taxation upon his property than any farmer in that state. I stated that, after careful, actual calculation. And I hold this principle to be true. It is as much or more to the interest of the farmer that we fix this principle here in this constitution, than the manufacturers and merchants. One word as to the effect of these exemptions. Why is it that you have not a woolen factory in the state? Two individuals have been to the river counties of this state during the present season to endeavor to establish a woolen factory, and have gone back to the eastern states declining to establish those factories because, as they say, "you will tax us out of existence." Now I have reason to know there are farmers in my county and other parts of the state, asking today for the loan of $100 or so, as the case may be, to make improvements, or pay debts, more than any other class of men in the state. And how is it that, while money was yesterday at two and three per cent; on call in New York, our farmers cannot get the money It is because your capitalists have driven it beyond the borders of the state, and it don't dare to come back. I know this, after an experience of thirteen years. And come here to plead for equal taxation upon every class of property in the state.

One word in regard to this great principle. I thank my friend, the gentleman from Saunders for enunciating the principle which is sensible wise and just. If, by the planting of fruit trees, and forest trees upon the farm the chief justice or any other man, in this state, who thereby improves the land, speculates. What for? Why he sets it up to the very top notch and pays its proportion, and assesses it right up. Assess the property, and do not suppose, for a moment, that by exempting one class of property you will benefit any one class of men. If you assess my property because I plant a few trees, if you exempt that, I will pay for that exemption in another way. Examine the assessment roll in any of your cities, and compare it with the assessment rolls of your county. There is not a county in the state that pays the same rate of taxation compared with the exact value of the farm itself that the manufacturer or merchant pays. These are facts. Consequently it is to the interest of one and all that we should all pay and pay alike.

Mr. ROBINSON. I am inclined to think that this amendment obviates all the difficulties which were opposed to the other, and the other was open to objections. When a man lays out out funds on improvements like this it is his capital sum; and for many years he lies out of the use of it. But he should be taxed upon his capital so invested. So these gentlemen argue. If a man lays out a large sum of money in an orchard, he has to wait five, six or ten years before that orchard amounts to anything. In a country like this, where there are few orchards, it seems to me, the men who cultivate them should be free. I think it ought to go no further. It is only a matter of expediency. These gentlemen who invest money in town, their profits are immediate. They can afford to be taxed, but the farmer has to wait many years, and pay many taxes, for this improvement before he can begin to receive any returns.

Mr. WAKELEY. I would not continue this discussion, but that I think I can suggest one point which has been overlooked by gentlemen who have opposed this amendment. It has been urged here that this violates the true principle of taxation, and that it is taxing one man's property for the benefit of another. I do not consider that it has that effect. It has never been denied, Mr. Chairman, that the legislature had a right to extend the bounty of any public benefactor to any man who benefited by the entire county, either by destroying what was obnoxious to the public, or by introducing something generally beneficial. I suppose there could be no doubt, if the legislature found it necessary, they would have the right to offer a bounty of $1,000 to any individual who should introduce into this country, and show by experiment, that it would answer the purpose, to introduce a hedge which should supply the need of the country, or some variety of fruit; or who should experiment in grape culture until he could establish a success. And other instances of that kind might be mentioned. Now, what do we say by this proposed amendment? Simply that we offer to those who will cultivate forest trees and fruit, that we exempt them from taxation upon that particular property. We desire to encourage the cultivation of these forest trees and grape vines, etc. May we not lawfully do that? And is it not a question of public policy whether the legislature do so or not? I so regard it, and when you look at the constitution of this country it seems to me there is abundant reason for encouraging the growth of fruit. Now can we do any more useful thing for posterity than to encourage persons in supplying this natural want. Sir, we regard this timber question as the great question of the age. I think it is the great problem for agriculturalists to solve, and it seems to me that when you leave this power to the legislature to give a bounty to those who will cultivate timber trees in this country, you do an excellent thing. You do not withdraw any taxation, but you will say to the man who adds to the advantages of this country that he shall not pay taxes upon these advantages. Yet the property is taxed the same as before. The land upon which the timber is grown is taxed just as it was before. It is to be supposed, of course that the legislature will keep this in due bounds and that they will not so far extend this exemption as to merely benefit speculators.

Mr. KIRKPATRICK. Mr. Chairman. I merely wish to ask a question. I don't conceive it to be any injustice to the public that a farmer should have an exemption for trees he plants out. Suppose a man residing upon his land invests $1,200 in money in an experiment. The farmer puts capital on his farm in the way of improvements. His capital is simply the labor he expends in this way, in most cases, and he escapes taxation upon this capital simply—the calculated value of his labor. I think the amendment should prevail.

The CHAIRMAN. The question is upon the amendment proposed by the gentleman from Otoe (Mr. Mason) as an addition to section 3.

The committee divided, and the amendment was agreed to.

The CHAIRMAN. The question recurs upon the adoption of section 3, as amended.

The section as amended was adopted.

The Chairman read the next section, as follows:

Sec. 4. The legislature shall provide in all cases when it may be necessary to sell real estate for the non-payment of taxes, or special assessments for state, county, municipal, or other purposes, that a return of such unpaid taxes or assessments shall be made to some general officer of the county having authority to receive state and county taxes, and there shall be no sale of property for any said taxes or assessments, but by said officer, upon the order or judgment of some court of record.

The section was adopted.

The chairman read the next section as follows:

Sec. 5. The right of redemption from all sales of real estate for the non-payment of taxes, or special assessment of any character, whatever, shall exist in favor of owners and persons interested in such real estate for a period of not less than two years from such sales thereof; and the legislature shall provide by law for reasonable notice to be given to the owners or parties interested by publication or otherwise, of the fact of the sale of the property for such taxes or assessments, and when the time of redemption shall expire; provided, that occupants shall in all cases be served with personal notice before the time of redemption expires.

Mr. NEWSOM. Mr. Chairman, I move to strike out the word "two," in the 3rd line, and insert the word "four."

The CHAIRMAN. The question is upon the amendment of the gentleman from Otoe county (Mr. Newsom.)

The amendment was not agreed to.

Mr. ROBINSON. Mr. Chairman. I move to strike out the proviso in the 7th line.

The CHAIRMAN. The question is upon the amendment offered by the gentleman from Lancaster county, (Mr. Robinson.)

The amendment was not agreed to.

The CHAIRMAN. The question is upon the adoption of the section.

Section five was adopted.

The chairman read the next section, as follows:

Sec. 6. The legislature shall have no power to release or discharge any county, city, township, town or district, whatever, or the inhabitants thereof, or the property therein, from there or its proportionate share of taxes to be levied for state purposes, nor shall commutation for such taxes be authorized in any form whatever.

Mr. VIFQUAIN. Mr. Chairman. I desire to insert an additional section right here.

The chairman read the proposed section, as follows:

"Any corporation created or hereafter to be created, and which has or shall receive land grants from the federal government shall after they have begun to dispose of said lands under their so-called pre-emption laws be taxed upon such bonds as upon notes or credits, and the legislature shall provide by law for the strict enforcement of this provision."

The CHAIRMAN. The question is upon the adoption of the proposed amendment.

Mr. BOYD. Mr. Chairman. I think that section is covered by a section in the report of the committee on railroad corporations. In that, we tax the property of individuals, the same as corporations.

Mr. ROBINSON. Mr. Chairman. I have a substitute to offer for the proposition, it is partly covered by the report of the railroad committee, but not wholly.

The Chairman read the substitute, as follows:

"All lands in this state heretofore granted, or that may hereafter be granted by the United States to any corporation, or to which any railroad corporation is now or hereafter may be entitled by the building of its railroad or otherwise shall be subject to taxation from the time the grant thereof takes effect, and every corporation shall be subject to taxation upon all credits accruing to the same in respect of the sale or what disposition soever made of such lands."

Mr. MASON. Mr. Chairman. I believe the ideas contained in these proposed amendments are correct; that is to say that these corporations having land in the state of Nebraska should pay taxes on the bonds or notes of the land sold, but whether this is not sufficiently provided for I am not prepared to say. These foreign corporations—the personal property is always taxed where the individual resides and the question would be whether we could reach their personal assets although they accrue from the sale of lands in the state, and because of this I will move that the substitutes be referred to the committee on judiciary, that they may inquire into this question and submit a section if advisable. I make this motion because at this time, I for one, am not prepared to consider it. I will want some time to counsel with other legal gentlemen.

Mr. ESTABROOK. I would like to know the character of title which this B. & M. Co., claims and upon what basis it rests?

Mr. ROBINSON. The act of 1864 made this grant and they have filed their acceptance of it. Here is the act.

"And be it further enacted, that for the purpose of aiding in the construction of said road, there be and hereby is, granted to said Burlington and Missouri River R. R., every alternate section of public land (except mineral lands as provided in this act) designated by odd numbers, to the amount of ten alternate sections every mile on each side of said road on the line thereof and unsold prescribed or otherwise disposed of by the United States and to which a preemption or homestead claimant have attached at the time the line of said road is definitely fixed; provided that said company shall accept this grant within one year from the passage of this act by filing such acceptance, with the secretary of the interior, and shall also establish the line of said road and file map thereof with the secretary of the interior within one year of the date of said acceptance, when the said secretary shall withdraw the lands embraced in this grant from the market."

They have completed their road through this county and have fully complied with the requirements and have sold their lands and got the money for them. They have given the pre-emption certificates.

Mr. ESTABROOK. If there is a property here to be conveyed to individual settlers, there is property there to be taxed.

Mr. MASON. Mr. Chairman. I desire to add to that committee to whom these are to be referred. Judge Wakeley, General Estabrook, and also the gentleman from Saunders (Mr. Sprague.) I would like to have this consultation in respect to this matter to see what is right and proper.

Mr. BOYD. Mr. Chairman. I am in favor of the section as reported by the committee. In the early part of this session I introduced two resolutions which were referred to the judiciary committee, one was to know whether in their opinion we had ought to regulate the fare of freight and passenger tariff in the state, and another was whether we had the right to tax these lands from the time they received the title. That committee never made any report, consequently we had to draw a section as near right as possible under the circumstances.

Mr. MASON. When a corporation created by authority of the state comes here to do business, do not they plant themselves on this soil and become subject to all the rules of law that an individual would? I desire this reference in order that this committee may discuss this matter.

Mr. BOYD. Mr. Chairman. I think every note and every bond these companies issue are being taxed, if the assessors and tax collectors do their duty. They borrow money on all the notes they hold for the purpose of building the road.

Mr. McCANN. Mr. Chairman. I cannot agree with my friend in regard to that. I have been informed by a gentleman who knows, that the B. & M. road have enough land in the state of Nebraska to build four such roads. I hope this reference will be carried, and that this subject will be thoroughly examined and discussed, that we may know whether the B. & M. or any other railroad company can own a section of land in Nebraska and operate a system of pre-emption of their own, sell that land, derive an income in the way of interest on notes and not pay any taxes.

Mr. MASON. I wish to add Mr. Robinson to this committee.

Mr. PHILPOTT. Mr. Chairman. I may be able to throw some light upon this. The forms they use in selling land contain the terms upon which they will grant a pre-emption, below that is a blank description of the land with a few words saying "I hereby have pre-empted the above land and agree to be bound by all conditions expressed in the above pre-emptions;" that there shall be six or ten per cent interest paid on the value of the land. It is questionable whether the B. &. M. company have any lands in this state, there was a grant made of certain lands in Iowa on the condition that that company built an extension of their road from some place on the west side of the Missouri river to the hundredth meridian, and I wish gentlemen to bear this in mind, that company never has done one particle of work, they have not built an extension of their road, but another company the B. & M. railroad in Nebraska, a separate organization have been building the road and to that company there never was a grant of land made.

Mr. MASON. Mr. Chairman. I was aware we were entering upon a difficult, a very difficult theme when this question came up and it was for that reason I made that motion.. I think, sir, there is danger of the state of Nebraska soon wanting a statute of Mortmain. Take hold of this matter with a whole hand to exact justice, to wrest from this power that makes laws and establishes pre-emption in our midst whatever she holds that is wrong, give her whatever is right. I hope the amendment may be carried.

The motion was agreed to.

The chairman read the next section, as follows:

Sec. 7. All taxes levied for state purposes shall be paid into the state treasury.

The seventh section was adopted.

The chairman read the next section, as follows:

Sec. 8. County authorities shall never assess taxes, the aggregate of which shall exceed two dollars per one hundred dollars valuation, except for the payments of indebtedness existing at the adoption of this constitution, unless authorized by a vote of the people of the county.

Mr. NEWSOM. I move to amend in the second line, by striking out the words "two dollars," and insert "fifty cents;" and insert, after the word "constitution," in the third line, and insert "and for school purposes." The latter amendment is put in in order to allow county authorities to assess for school purposes, over and above $100 valuation.

Mr. ROBINSON. I would ask that they be put separately.

The CHAIRMAN. A division of the question is called for. The motion to strike out will be first in order.

Mr. GIBBS. I hope this will not prevail. It will not leave revenue for carrying on county business.

Mr. PHILPOTT. The Illinois constitution provides for five cents on the one hundred dollars. I think gentlemen should look carefully before they vote.

Mr. MASON. I hope this will not be stricken out. They are not required to levy this amount, and I suppose in counties like Otoe and Douglas, it will not hurt them. But I can instance cases, in the First district, where extraordinary emergencies occur when it ought to remain. Your county commissioners are always levying and they will observe the necessity of levying as little taxes as possible, for their own sake, and always will. It is not that they shall do it, but that they shall not exceed that; and there are counties where it might be necessary for them to do it in self-preservation and the protection of society.

Mr. SPRAGUE. I hope this will not prevail for the reason that there are a number of counties in this state which have bonds on interest in addition to the amount of expenses concurring; and if this be in it will be impossible for them to carry on and pay expenses. Now, in our county there is about 19½ mills county tax, for the purpose of paying this indebtedness; and it will be just as necessary next year as it is this. It is not obligatory on them to assess that amount, but it may be.

Mr. HASCALL. I hope that the two dollars wll be stricken out and that one dollar will be inserted instead of fifty cents. I will make that motion. I could give many reasons for this, did I deem it necessary.

Mr. NEWSOM. I accept the amendment.

Mr. PHILPOTT. I move to amend by making it $1.50.

Mr. McCANN. Mr. Chairman. I would like the attention of the gentleman from Douglas who has just made this motion. I am astonished, but greatly gratified to see him making such a motion. I would ask him what the present rate of city and county taxation is in his county now.

Mr. HASCALL. I think it is about two per cent.

Mr. McCANN. I venture to correct the gentleman. Nearer four per cent.

Mr. HASCALL. You are mistaken.

Mr. McCANN. I said city and county.

Mr. HASCALL. Oh! That's a different matter!

Mr. McCANN. My own city and county has four and one-tenths. I have conferred with cities and counties for weeks past, and have endeavored, intelligently to provide for just what we can afford. I venture to say we ought not to exceed two per cent. Talking to Mr. Newsom some time ago, I had said we might place it at $1.50, but, in my own case, it will work great hardship if we reduce it to $1.50. I think we had better leave it where it is. I look forward to the good time coming when it shall be reduced to five mills. But in view of the fact that certain expenses are absolutely necessary in our growing position in this state, we shall find if we limit it to one per cent the constitution will necessarily be rejected. We will find, Mr. Chairman, if we come down to one per cent, that the constitution will be rejected. We cannot come down from 5 per cent to one per cent all at once. We must have uniform, equal taxation, and then economize.

Mr. NEWSOM. I would inquire of my colleague, Mr. Chairman, what he wants of four per cent. One per cent upon the valuation of our county will bring in a revenue of about $60,000. Unless they want to pay some debts of the county. $60,000 per year ought to be sufficient for our county expenses. There is no need for any such per cent being taken from the people. If the county is in debt a levy of two per cent may be made to cover this expense.

Mr. MASON. Mr. Chairman. I want to explain what is done with our money. They say $60,000 went off in the flood on Friday last. This may occur again. I want to call the attention of the committee to this fact which has come to my observation. Over here in Saline county, a poor man with his wife and family was moving up into the Indian country. He stole a cow, or at least he was accused of it and was followed and shot down, his family were left with nothing. They were thrown upon the county which also had the expense of trying the five men who did the shooting, to pay. Now, there is an individual in this convention, who supported this poor family for a great length of time. He carries county warrants which were given him by the county officials. He needs his money, but cannot get it because there are no funds in the county treasury. And suppose a murder is committed in a sparsely settled county. There is a good deal of expense connected with the trial of the murderer. You have exempted the land of those who own perhaps, two-thirds of the land in that neighborhood, from taxation. Now, sir, I say let the land pay the expenses of the trial. I would like to hear from my friend Mr. Moore, because he understands this matter, and knows in the sparsely settled counties there will never be a greater tax levied than is necessary to carry on the expenses of the county. Now say you will not vote more than fifty cents on the hundred dollars. Suppose all your bridges are swept away, as they are in our county today. What will you do? Will you wait until the people can vote money to rebuild these bridges? By the by, George Francis Train once said a very wise thing, and that was that the next best thing to having a million of money in the bank, was to have every body believe you had it, even if you did not have a cent in the world (Laughter.) Now, sir, if you make people believe you have money, you can get along.

If this proposition prevails, you are going to take away from our counties the power to provide for the destitute, feed the hungry and clothe the naked.

The CHAIRMAN. The question will be taken first upon striking out the words "two dollars" in the second line.

The motion was not agreed to.

Mr. NEWSOM. Mr. Chairman. I will withdraw my amendment.

The CHAIRMAN. The question is on the adoption of the section.

Section eight was adopted.

Mr. McCANN. Mr. Chairman. I move the committee rise, report progress and ask leave to sit again.

The motion was agreed to.

Mr. LAKE. Mr. President. The committee of the whole have had under consideration the report of the committee on revenue and finance and have instructed me to report to the committee two propositions and recommend that they be referred to the judiciary committee, and Messrs. Wakeley, Estabrook, Sprague and Robinson, and also to report progress and ask leave to sit again.

Mr. BOYD. I move the report of the committee be concurred in.

The motion was agreed to.

Mr. WAKELEY. Mr. President. I wish to make a motion to meet at 8 o'clock this evening.

The motion to adjourn tomorrow noon until Monday was voted down.

I hope we will do a half-day's work tonight, and then that the gentlemen will help us get an adjournment tomorrow noon.

Mr. THOMAS. I move we adjourn till 8 o'clock tomorrow morning.

The convention divided and the motion to adjourn to 8 o'clock tomorrow morning was not agreed to.

The PRESIDENT. The question is on adjourning until eight o'clock this evening.

The committee divided and the motion was agreed to.

So the convention (at six o'clock and twenty minutes) adjourned.

Evening Session.

The convention met at eight o'clock p. m., and was called to order by the president.

Mr. STEWART. Mr. President. I have a resolution to offer.

The secretary read the resolution, as follows:

Resolved, That the rules be suspended and that no member be allowed to speak but fifteen minutes, either in convention or committee of the whole, unless he be chairman of the committee of the report under consideration, or the mover of a proposition in which case he shall have ten minutes to reply.

Mr. GRIGGS. I move the adoption of the resolution.

The resolution was adopted.

Mr. McCANN. Mr. President I move we go into committee of the whole for the further consideration of the report of the committee on revenue and finance.

The motion was agreed to.

So the convention went into committee of the whole—Mr. Lake in the chair proceeded to consider the report of the committee on revenue and finance.

The Chairman read the next section as follows:

Sec. 9. The legislature may vest the corporate authorities of cities, towns, and villages with power to make local improvements by special assessment, or by special taxation of contiguous property, or otherwise for other corporate purposes. All municipal corporations may be vested with authority to assess and collect taxes; but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same.

Mr. THOMAS. Mr. Chairman. I think there is a misprint here. I move that a period be inserted after the word "otherwise," and the word "all" inserted between the words "for" and "other."

The motion was agreed to.

Mr. NEWSOM. Mr. Chairman. I have an amendment to be inserted at the end of the section. "But in no case shall the aggregate of all taxest levied in any one year by any corporate authorities of cities or towns exceed one dollar per one hundred dollars valuation, except for the payment of indebtedness existing at the adoption of this constitution, unless authorized by a vote of the people of said city or town. Provided, that taxes may be levied for school purposes without regard to the limitation fixed in this section."

Mr. NELIGH. Mr. Chairman. I am opposed to the amendment unless it is worded that whenever a corporation may vote certain taxes. I do not see that these old towns that have all the necessary improvements, should incorporate in our organic law a provision to prevent the new towns springing up in the west from making public improvements. In our town we shall want to expend $10,000 or $20,000 the next year, but this would prevent us from doing so. I hope the amendment will not be insisted upon. ?

Mr. McCANN. Mr. Chairman. I fear we will make a mistake if we limit it to one per cent without permitting such corporations to increase that amount by a vote. I fear too, Mr. Chairman, that we will create so much hostility to our constitution by going too far in the way of limitations. Circumstances are constantly arising where it is necessary to increase the amount of taxation from time to time. Take the effects of the late storm at Nebraska City, we may have repeatedly to provide for what we have not anticipated in making a levy for the present year, and we may have to almost double our levy for the ensuing year. I wish to unite with the members of this committee and so limit the power of city councils and corporate authorities so that we may be upon the safe side.

Mr. STRICKLAND. Mr. Chairman. I hope the gentleman will withdraw his amendment. It ties the hands of Omaha a city which has one-fifth the wealth of the state. Why not leave this question open to the city councils who are the legislators and represent the wishes of the people. Our taxes you will remember have been very high, we have been curtailing them, but if we adopt this amendment our people are prevented from doing what they want.

Mr. HASCALL. Mr. Chairman. This whole matter was given considerable attention last winter in preparing a new charter for cities of the first class, and from all the knowledge I could derive on the subject I came to the conclusion that the city government of Omaha could not be run without levying a one per cent tax for general city purposes, and we so limited it in the new charter, and some of our councilmen have claimed that the city government cannot be run for one per cent. I think that is just about the figure. But we have another provision, and when we came to consider the necessity of such a provision you will see the impropriety of inserting a provision in the constitution that the aggregate of all taxes levied cannot exceed in one year one per cent. There is a provision in the charter that bonds may be issued by the city for any purpose provided two-thirds of the qualified voters of the city shall ratify an ordinance submitted to the voters for their adoption or rejection, or is it necessary to have a provision of that kind; there are several reasons, if the city should want to erect water works they would probably have to issue their bonds for from fifty to a hundred thousand dollars. When you issue the bonds of a city you have to provide for a sinking fund, not only to pay the interest on the principal at maturity. I undertake to say you cannot properly conduct the city government as is necessary for a city like Omaha unless you have a tax of one per cent for general city purposes, and if you go into any project by which you have to issue bonds you have, in addition to the interest, to provide a sinking fund. Another consideration, sewerage in a city is an important item and in order to properly sewer a city you have to have the money in advance, it costs a large sum of money, you have to issue bonds for that purpose, and have to pay off the bonds by levying a sinking fund as in the case of bonds for any other purpose, you cannot by a general levy of one per cent accomplish any of these improvements, it cuts us off from any of these improvements, and only provides you may levy more than one per cent to defray present indebtedness. We have got no sewerage nor water works in our city and if this provision is adopted in this constitution, it effectually debars us from having waterworks or sewerage for the city.

Mr. THOMAS. I think this provision is entirely unnecessary. There may be a very good reason why such a provision should be inserted, in reference to county commissioners. But it seems to me we need nothing of this kind for the city authorities. I can see the reason of the objection for Omaha and cities of the first-class. We can offer similar objections for second class cities. It is necessary that these judgments be paid, and it may become necessary to levy taxes to a greater amount than $100. I think there should be no limitation in both. It is impossible for members of this convention to say what taxes may become necessary in cities. I would ask gentlemen in favor of this amendment how they could propose to pay judgments obtained against a city if they could not levy a tax beyond the amount spoken of here.

Mr. NEWSOM. My amendment was not as full as I intended it to be. I will amend the amendment I have offered by adding, in its appropriate place "without first submitting the question to the people." Now, that there is a necessity for a limitation of taxes in cities, there can be no question. I know it from my own experience. And that there is a necessity for limiting those county officers upon some occasions. You heard it said a day or two ago that when an alderman or the mayor of a city went into office the streets in front of their residence was graded, and that as fast as officers changed improvements were made. With a view of rectifying this, I think it necessary to put some limit upon those cities in their taxes. I will answer the gentleman that no public improvement ought to be made in a city of any consequence without first submitting the question to the people. It ought not to be done any more than the legislature shall make an appropriation without first having the sense of the people upon it. If it is necessary to erect a water-works at Omaha, if the people thought right to levy a tax is not it within their province so to do? This is to prevent the city authorities—not the people. The people can vote the tax; and it is in this view of the case, not as I first read it—that this question shall be first submitted to the people.

Mr. McCANN. It is thought that if we adopt section nine it will leave us open to objections now being urged against it. I propose as an amendment to the amendment of my friend, to section nine, to strike out the word "contiguous," and add the following: "The legislature may vest the corporate authorities of cities, towns and villages, with power to make local improvements by special assessments or special taxation, or by the assessable property in such cities, towns or villages, or otherwise."

I am aware much serious litigation and trouble has been created by this section being adopted in the Illinois constitution, and is now being had.

The CHAIRMAN. That is not an amendment to your colleague's proposition. It cannot be entertained.

Mr. STRICKLAND. Mr. Chairman. The word "contiguous" certainly ought to be stricken out. Suppose a man had a fine residence just outside the city limits and it was taxed for city purposes?

Mr. THOMAS. The word "contigious" means contiguous to the local improvements, not to the boundaries of the city. It seems to me the sentence is correct. The question may be asked what are local improvements? But that has nothing to do with it, for if there are no local improvements there are no assessments. There may be much litigation over this in Chicago, but I see no objection to the section as it stands.

Mr. TOWLE. I agree with the view of the chairman of this committee, and I believe either the three lines should be stricken out or the substitute adopted. This very paragraph has given rise to a vast amount of litigation and trouble in Chicago. The past two or three months the papers have been full of the iniquities of this system, which it seems the lobbyists secured in the last constitution. It appears that in Chicago the board of aldermen have laid out certain parks, and for the improvement and building up and creating and general beautifying of these parks they have levied a special tax upon the property contiguous thereto, based entirely upon this constitutional provision; and as a rule, it has elicited a thorough discussion; and the proposition as voted to day by the citizens of Chicago has shown it to be an outrage which ought not to be tolerated in any community. And it is the same principle we have discussed in our bill of rights; and the idea here is to build up certain local improvements and assess damages and taxation on the property contiguous thereto; for the benefits which shall accrue.

The CHAIRMAN. The question is upon the adoption of this amendment.

The amendment was not agreed to.

Mr. MAXWELL. Mr. Chairman. I move to strike out down to the word "or" in the 3rd line. This has been very closely copied from the Illinois constitution. Now we know but very little about the practical workings of that constitution. This section seems to legislate too much —it seems to go into details. These three lines are very objectionable in many respects.

Mr. HASCALL. Mr. Chairman. I also am in favor of striking out these three lines. Now there are many cases in which special assessments must be made. It is usual to divide cities off into sewerage districts, and levy a tax for sewerage purposes.

Mr. McCANN. To save time, I will make a proposition. Neither the city of Omaha, Nebraska City, Lincoln or Brownville can afford to have you strike out these three lines. I think if we will pass over this until the next session, by that time we can prepare something that will be objectionable to none.

Mr. ABBOTT. Mr. Chairman. I will tell the gentleman that all the improvements in the cities of Illinois were made under this provision.

Mr. GRIGGS. Mr. Chairman. I also am in favor of the section, as proposed by the standing committee. I believe that it would be wrong to strike it out. It is necessary that there should be provision made for levying a tax of more than two mills. We could not carry on our county government if we did not. You must recollect that in these western counties we have not so large an amount of property to tax, as there is in the eastern counties. Jefferson county had only about $500 000 valuation last year. Now what could you do in that county under the provision spoken of?

Mr. HASCALL. Mr. Chairman. I withdraw my amendment.

Mr. ROBINSON. Mr. Chairman. Then I renew my amendment.

Mr. GRIGGS. Mr. Chairman. This provision will bear harder on the western counties. Saline county for instance, had a man in jail four months, and had to bear the expense of this. You must bear in mind that these new counties are worth comparatively nothing. It may be that in the counties of Otoe, Cass and Douglas a five mill tax is all that is necessary. You must take into consideration the fact that a two mill tax in the new counties would not go as far as a one mill tax in the older counties. Leave us the right to levy in the western counties the amount necessary to carry on our county government. I give you my word that we don't intend to levy a larger amount than we need.

Mr. PRICE. Mr. Chairman. I have had some little experience as a county officer. I am very much in favor of not reducing this amount which can be levied for taxes, any lower than it is placed in the report of the committee. I do know that in the western counties, we are not having any work done, because money cannot be drawn on county warrants. A serious murder trial would almost bankrupt one of our western counties—it would not be able to meet the necessary expenses.

Mr. McCANN. We do not wish to intrench upon the rights of any individual, and we wish to give every city in the state all they are entitled to.

Mr. ESTABROOK. Mr. Chairman. I think I can tell why this provision was framed in this constitution. An attempt was made to levy a tax in the city of Chicago to pay for an improvement made in a certain place and I think the discussion of the case suggested this provision. The discussion is found in the 18th Vol. of the Illinois reports and in the case of Larned, this whole ground was gone over thoroughly. There it was provided that all improvements should be uniform—that you could not levy a tax to build a side walk that would not be uniform. This provision was made, unquestionably to remove that objection. I live, perhaps on high ground. My neighbor lives on the level, and it don't cost him so much to have a sidewalk laid in front of his premises as it does me. I think the cost of these local improvements, between us. That is the only way to make it fair and equal.

Mr. THOMAS. You would have a general tax for local improvements?

Mr. ESTABROOK. Yes, sir.

Mr. MASON. I think this section is very unfair. Let us put it into practical working. Here, on this side of the street lives a poor family———

Mr. McCANN. Mr. Chairman. I would prefer that we pass over this tonight. I will confer with the city authorities of our city, and of other cities. Then we will be able to discuss the question more understandingly.

A majority in the city has first to agree to buy the property next to make the taxes proper to pay for the improvements of the property.

Now I wish to ask the chief justice if it was intended to pave main street in Nebraska City, whether he would not have the property holders along that street pay for such improvements?

Mr. MASON. Never! never! never! The whole city treads that pavement, and the whole city must pay for it.

It is said that $250,000 was paid to get this monstrosity through the Illinois convention and I ask this convention never to do the like. If I live on a cross street am not I equally benefited when the main street is paved? I undertake to say I am, sir, and I say the same as to putting in bridges in the county.

Mr. McCANN. Mr. Chairman. I would like to have this question postponed until Monday.

Mr. STRICKLAND. Mr. Chairman. I move that when this committee rise it report this section back to the committee with the recommendation that it be recommitted to the standing committee.

The motion was agreed to.

The chairman read the next section, as follows:

Sec. 10. The legislature shall not impose taxes upon municipal corporations, or the inhabitants or property thereof for corporate purposes; but shall require that all the taxable property within the limits of municipal corporations shall be taxed for the payment of debts contracted under the authority of law, such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. Private property shall not be liable to be taken or sold for the payment of the corporate debts of a municipal corporation.

The section was adopted.

The chairman read the next section as follows:

Sec. 11. No person who is in default as collector or custodian of money or property belonging to a municipal corporation shall be eligible to any office in or under such corporation. The fees, salary, or compensation of no municipal officer, who is elected or appointed for a definite term of office, shall be increased or diminished during such term.

Mr. STRICKLAND. I move to strike out all after the word "corporation" in the third line.

Mr. MASON. That is the best part of the section.

Mr. STRICKLAND. Then I will give some reasons for striking it out. In our city our policemen were not getting enough pay to support their families, and it was raised during——

Mr. BOYD. Are they elected for a certain period?

Mr. STRICKLAND. Yes, sir, and is this committee going to say——

Mr. McCANN. For what term of office are they elected?

Mr. STRICKLAND. For the same term as the mayor, but may be removed for cause——

Mr. THOMAS. Does the gentleman pretend to say that they——

Mr. STRICKLAND. Well, I am not teaching law school here. I have stated how this will work in our city. I didn't want to take up the time of the committee—Like Gen. Estabrook's clothes line; "it is a very long line for so small a wash." (Laughter.)

The CHAIRMAN. The question is on the motion of the gentleman from Douglas (Mr. Strickland.)

The motion was not agreed to.

The CHAIRMAN. The question is on the adoption of the section.

Section eleven was adopted.

The secretary read the next section, as follows:

Sec. 12. No county, city, township, or school district, or other municipal corporation shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness. Any county, city, school district; or other municipal corporation, incurring any indebtedness, as aforesaid, shall before or at the time of doing so provide for the collection of a direct annual tax, sufficient to pay the interest on such debt as it falls due, and, also, to pay and discharge the principal thereof within twenty years from the time of contracting the same. This section shall not be construed to prevent any county, city, township, school district or other municipal corporation from issuing their bonds in compliance with any vote of the people which may have been had prior to the adoption of this constitution, in pursuance of any law providing therefor.

Mr. BOYD. Mr. Chairman. I move the consideration of this section be passed over and that when the committee arise it recommend to the convention that this section be considered at the same time as a report of the committee on state, county and municipal indebtedness.

Mr. McCANN. Mr. Chairman. I wish to save all the time I can but this question has got to be discussed and we may as well occupy our time this evening discussing this and discharging business as in any other way. I hope the section may be considered and adopted.

Mr. STEWART. Mr. Chairman. I hope the consideration of this section will be postponed until the article comes up in the other article referred to. There is considerable difference of opinion with regard to the bond question. I am in favor of having this question submitted as a separate proposition. I am satisfied the people in our part of the country will vote against the whole constitution, only allowing counties to vote five per cent. I hope it will be deferred so that we may take action in connection with the other article.

Mr. STRICKLAND. Mr. Chairman. This section is the report of the committee on state, county and municipal indebtedness. So far as I am conversant with the opinions of the gentlemen of the convention, almost all members have got distinct ideas in regard to this section. It would be useless to take it up now and have to go over it again. I am in favor of the motion.

Mr. MASON. Mr. Chairman. We are here and "sufficient unto the day is the evil thereof." We have this section and let us go on and consider it. I think I fully apprehend the stumbling block. There is not a gentleman upon the floor but who has made up his mind on it. I am in favor of taking it up now.

Mr. THOMAS. Mr. Chairman. I hope the motion will be withdrawn and the committee will go on with this article.

The motion was not agreed to.

Mr. TOWLE. Mr. Chairman. I move we insert the word "ten" instead of "five" in third line.

Mr. McCANN. Mr. Chairman. I do not propose to discuss this question, but I implore the committee to treat with consideration with regard to the best interest of your respective towns and counties. I know you have all made up your minds as to how you will vote, I simply ask the committee to consider whether we have not recommended that sum which is about fair and just to all parts of the state. I submit that five per cent of the assessed value of your taxable property is as much as you can afford.

Mr. GIBBS. Mr. Chairman. I move to strike the question out altogether with a view of submitting it as a separate proposition. It can never be agreed upon to suit the people and that is the only way to dispose of it.

Mr. ESTABROOK. Mr. Chairman. According to this a school district within the city for instance may raise five per cent, the city may raise five per cent, and the county embracing the city may raise five per cent. I think a critical examination should be made of it before it becomes a fundamental law of Nebraska.

Mr. MASON. Mr. Chairman. I think there is no impropriety in adopting this section as it stands, it would not be a limitation on that portion of the constitution relating to county, city and municipal indebtedness, that is to say if it be the sense of the convention that a county might go into debt ten or twenty per cent for the purpose of aiding a municipality or private corporation. I do not think this section is designed to apply to that at all. That is a distinct provision for which we have raised a distinct committee. This relates to another class of indebtedness, and a class who, I apprehend no gentleman here will object to his town or county or city giving aid to the extent of five per cent to accomplish any such as is attempted in this provision. If this be true anything I shall say that a county or town might go into debt or loan its credit or bonds to a railroad corporation at 10 or 15 or 20 per cent, it would in no wise conflict with this provision; but this would be held to relate to that class of indebtedness in regard to school houses such as building school houses, providing furniture and apparatus, and in counties for bridge or extraordinary purposes; and in cities strictly city purposes; and not loaning its credit to aid corporations. In this view of the case I am in favor of the provision as it now stands, at 5 per cent, believing it will in no wise affect this question of loaning credit of cities on matters of railroad and that kind of municipal indebtedness.

Mr. STEWART. In the second line "for any purpose"——

Mr. MASON. I think I shall desire to amend that.

Mr. BOYD. If the gentleman from Richardson will withdraw his amendment, I will offer one which will be satisfactory.

The CHAIRMAN. The question is upon the motion of the gentleman from Burt, to strike out.

Mr. KIRKPATRICK. I rise to ask that this question be postponed. I hope it will not be stricken out. It may be a very proper provision to be inserted in the constitution; and as the report of the committee on state indebtedness has been alluded to in this connection with this I rather think the report of that committee will be a little fuller than this. The report from this committee was not expected to embrace the bond question. There are two reports, the committee will bear in mind, on this bond question made as majority and minority reports from the committee on state, county and municipal indebtedness.

The CHAIRMAN. The committee have refused to postpone this question. The question is upon striking out.

Mr. KIRKPATRICK. There can be a motion to postpone.

Mr. BOYD. I hope the gentleman will withdraw his motion to strike out.

Mr. NELIGH. I hope the motion will not prevail. This simply relates to school districts, the court house, etc. Shall this say that Cuming county shall not build a court house? We propose to build one, and have the privilege of issuing $20,000 or $30,000 bonds. We propose to build a school house in our district to cost about $10,000. Are you here to say we shall not do so? These river counties which have court houses may carry this question and we be prevented from building.

Mr. SCOFIELD. I hope the motion to strike out this section will not prevail; but I hope the further consideration will be postponed to some time when the report of the committee on state, county and municipal indebtedness is ready. The matter contained in this section was very thoroughly and carefully considered by that committee. It seems to me if this matter is postponed until the consideration of that report, before the convention, the whole matter can be considered and determined to the better satisfaction of the members of this convention. There is a majority and a minority report, the committee being unable to determine upon a section.

Mr. ESTABROOK. I have very serious doubts about the propriety of allowing school districts the incurring of any indebtedness.

Mr. WAKELEY. I wish to move an amendment to the section.

The CHAIRMAN. The gentleman may make a suggestion.

Mr. WAKELEY. I propose to amend the section by adding to it the following words: "Or to prohibit any indebtedness authorized for special purposes by other provisions in the constitution."

The motion to strike out was not agreed to.

Mr. ESTABROOK. Mr. Chairman. I move that when the committee rise we report this bill back to the house with the recommendation that it be referred back to the committee on state, county and municipal indebtedness.

Mr. MASON. Mr. Chairman. I move to amend the gentleman's motion by moving to refer it to the committee on revenue and finance, and the committee on state, county and municipal indebtedness.

Mr. ESTABROOK. I accept the amendment.

The CHAIRMAN. The question is upon the motion of the gentleman from Douglas (Mr. Estabrook).

The motion was agreed to.

The Chairman read the next section, as follows:

Sec. 13. The Governor, Auditor of state, State Treasurer, and members of the state Senate shall constitute a board of equalization, and shall meet at least once in each year, for the purpose of equalizing the assessment of property throughout the state.

Mr. MAXWELL. Mr. Chairman. I move to strike out this section, and I will offer a substitute. It is provided here that the equalization board shall consist of gentlemen who know but little about real estate. It will not do to have the equalization board consist of the senate because they would have to come from home to the capital, and many counties would have no representation whatever. It may not be necessary to have an equalization oftener than every two years. I believe the present board of equalization consists of the governor, auditor and treasurer of state.

Mr. HASCALL. Mr. Chairman. Our present mode of equalizing taxation meets with disfavor throughout the state. I believe there is not a county in the state that would not be better satisfied with the method we proposed. We would have 19 senators coming from all parts of the state, and these, with the governor, auditor and state treasurer would constitute the board. Now if there be any two men in the state who should be on this board it is the auditor and state treasurer. It seems to me the governor should also be one of the board. Then the nineteen senators ought to be men of sufficient intelligence and ability to fairly represent the interests of their constituents. I am not in favor of sending one man from each county because when we have 60 counties we would have a board consisting of as many men, and it would be too large. Now I say that Otoe, Cass, and Douglas counties should be satisfied with one member of that board.

Mr. TOWLE. Mr. Chairman Who are to do this work? It is no particular amount of labor to be done, it is an estimate to be made by the auditor. It is done upon the return made the year previous by a settled rule of proportion. You take the reports from the different counties and it takes but a simple and easy mathematical application to fix this up. Is it necessary that we shall have a large board to do this? The only argument used for it is that they will be acquainted with the valuation of the lands in their counties. The same argument might be used with the auditor coming from one section, the governor from another and the secretary of state from another. I am opposed to the section as reported by the committee. It provides that the state senators shall assist in doing this work. It provides that the assessment shall be returned here after the first of July, three or four months after the senate has adjourned and we will have to pay the expense of them coming back here to do what can easily be done without them.

Mr. HASCALL. Mr. Chairman. When I read over this report, and saw this section, I considered it the most important one in the article. It is a matter that has been agitated by the people all over the state. Now I am in favor of taking the plan of the section. Here we have some of the state officers and then the senators are selected because of the least branch coming from among the people and are supposed to know something about the interests of the state. I think that this duty can be performed satisfactorally in this way. I think we have not done our duty until we have adopted a section at least as good as this. I am certain the proposition of the gentleman from Cass (Mr. Maxwell) is not a better proposition, it would make too unwieldy a body. It would constitute at present a board of fifty members, and as the counties increased it would increase the number of this board. I think the number provided for in the section is ample and as little as we can get along with.

Mr. ESTABROOK. Mr. Chairman. It seems to me that both of these boards would be unwieldy. What we are looking for is a fair apportionment, and a board ex-officio, it seems to me would be best; the most appropriate I think would be the board appointed to take charge of public lands and buildings, they will have data from which they can judge of the value of land throughout the state. I move, sir, that that be the board instead of this one.

Mr. MYERS. Mr. Chairman. I rise to a point of order. If a motion to strike out is put and not carried it is equivalent to the adoption of the section, that is the case with this section and it can not be amended.

Mr. NEWSOM. Mr. Chairman. I move the committee rise, report progress and ask leave to sit again.

The motion was agreed to.

Mr. LAKE. Mr. President. The committee of the whole have had under consideration the article on revenue and finance, and have instructed me to recommend to the convention that section nine of said article be referred to the committee on revenue and finance, and that section twelve be re-committed to a select committee composed of the committee on state, county and municipal indebtedness and the committee on revenue and finance, and also to report progress and ask leave to sit again.

Mr. HASCALL. Mr. President. I move that when the convention adjourns to morrow forenoon it stand adjourned until two o'clock on Monday next.

The yeas and nays were demanded.

The secretary called the roll and the president announced the result—Yeas, 16; nays, 13; as follows:

YEAS.

Boyd,
Estabrook,
Hascall,
Kirkpatrick,
McCann,
Majors,
Maxwell,
Myers,
Newsom,
Reynolds,
Scofield,
Thomas,
Tisdel,
Towle,
Wakeley.—16

NAYS.

Curtis,
Gibbs,
Kilburn,
Lyon,
Mason,
Neligh,
Price,
Speice,
Shaff,
Sprague,
Stewart,
Thummel,
Vifquain.—13.

ABSENT AND NOT VOTING.

Abbott,
Ballard,
Campbell,
Cassell,
Eaton,
Granger,
Grenell,
Gray,
Griggs,
Hinman,
Kenaston,
Manderson.
Moore,
Parchin,
Parker,
Philpott,
Robinson,
Stevenson,
Weaver,
Wilson,
Woolworth,
Mr. President.—23.

Mr. McCANN. Mr. President. I move to reconsider that motion and lay it upon the table.

The PRESIDENT. That cannot be put as one motion.

Mr. HASCALL. Mr. President. I move to lay the motion to reconsider on the table.

The convention divided and the motion was agreed to.

Leave of Absence.

Mr. MAJORS. Mr. President. I beg to ask leave of absence for Messrs Tisdel and Thomas and myself until Monday noon.

Leave was granted.

Mr. REYNOLDS. Mr. President. I request leave of absence until Tuesday morning.

Leave was granted.

Adjournment.

Mr. STEWART. I move to adjourn.

The yeas and nays were demanded.

The secretary called the roll and the president announced the result.—Yeas, 18; Nays, 11; as follows:

YEAS.

Abbott,
Curtis,
Gibbs,
Hascall
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Majors,
Myers,
Price,
Scofield,
Sprague,
Stewart,
Thummel,
Tisdel,
Vifquain,
Wakeley.—18.

NAYS.

Boyd,
Estabrook,
Lyon,
McCann,
Maxwell,
Neligh,
Newsom,
Shaff,
Speice,
Thomas,
Towle.—11.

ABSENT AND NOT VOTING.

Ballard,
Campbell,
Cassell,
Eaton,
Granger,
Grenell,
Gray,
Griggs,
Hinman,
Ley,
Mason,
Manderson,
Moore,
Parchin,
Parker,
Philpott,
Reynolds,
Robinson,
Stevenson,
Weaver,
Wilson,
Woolworth,
Mr. President.—23.

So the convention at ten o'clock and fifteen minutes adjourned.

THIRTY-SIXTH DAY.

Saturday, August 5, 1871.

The convention met at eight

o'clock, and was called to order by the president.

Prayer.

Prayer was offered by the chaplain, as follows:

Almighty God, our Heavenly Father. we would recognize the proof that it is Thy hand that has upheld us thus far through the week, and we pray Thou will be with us in the closing hours of the closing day. Grant, that Thy goodness and Thy mercy shall attend those who go to their homes, and attend them safely back to the duties which lie before them; and guide and keep us all, for Christ's sake, amen.

Reading of the Journal.

The secretary read the journal of the day's proceedings, which was approved.

Leave of Absence.

Mr. MAXWELL. I ask leave of absence for Mr. Griggs.

Leave was granted.

Mr. VIFQUAIN. Mr. President. I would inquire whether the sergeant at arms and the door keeper have leave of absence.

The PRESIDENT. They have gone to take the mail down to the post office. We had an unusual amount this morning and I thought we had better get it off.

Leave of Absence.

Mr. GRAY. Mr. President. I would like to have leave of absence until Monday noon.

Leave granted.

Mr. SCOFIELD. Mr. President. I would like to have leave of absence until Thursday noon.

Leave granted.

Mr. LAKE. Mr. President. I would like to have leave of absence until Tuesday noon.

Leave granted.

Mr. MAXWELL. Mr. President. I would like to have leave of absence until Tuesday noon.

Leave granted.

Mr. KENASTON. Mr. President I would like to have leave of absence until Monday noon.

Leave granted.

Committee of the Whole—Educational Article.

Mr. ESTABROOK. Mr. President. I see the chairman of the finance committee is not here, and as there is but little to do on the educational article, I move we go into committee of the whole upon the consideration of that article.

The motion was agreed to.

So the convention went into committee of the whole for the consideration of the report of the committee on education, school funds and lands, with Mr. Stewart in the chair.

The chairman read section 4, as follows:

Sec. 4. The legislature shall require by law that every child of sufficient mental and physical ability, between the ages of six and sixteen years, unless educated by other means, shall attend a public school supported by the common school fund, for some definite length of time each year, to be fixed by law, and may establish schools for the safe keeping, education, employment and reformation of all children of such age who are destitute of proper parental care, or who are growing up in mendicancy, ignorance, idleness or vice, which schools shall constitute a part of the system of common schools.

Mr. KIRKPATRICK. Mr. Chairman. I think that is not a copy of the section. I think there has been a word interpolated. The word "shall" in the first line should read "may."

Mr. VIFQUAIN. Mr. Chairman. The section was reported just as it has been read, except that the word "shall" was stricken out at the wish of the committee.

Mr. MAXWELL. Mr. Chairman. I move a division of the question. There are properly two matters there. The first requires that children of a certain age be compelled to go to school. The other is to provide for reformatory schools. That should not be joined to the other proposition. They are entirely different. The second proposition is to provide reformatory schools out of the common school fund. So far as we can see it is to make boys a sort of criminal. Some court must determine whether the boy is under proper paternal care. Second, whether he is a mendicant. Third, whether he is idle, or growing up in an idle manner. Now, I understand the proposition is to authorize the legislature to place those who are guilty of crime no matter how small a criminal he may be, with those who are guilty of great crimes. I don't think the proposition for establishing schools of this character, is a good one. Boys growing up in this way do not acquire the self reliance that boys growing up in any other way do. If you are going to have a man stand up in the world you must train him to act upon his convictions. Boys who have been shut up in an institution of this kind would think whatever any one tells them is true, and they find out afterwards perhaps that there is a great deal of disproportion, never having been taught self reliance. Perhaps those who are educated by their own efforts is the secret of their success. Now you are going to deprive them of this spur and make them wards of this school fund. I move a division of the question, so that this question of compulsory education will come up by itself, and then submit this proposition separately so that the people may vote for each one separately.

Mr. McCANN. Mr. Chairman. I wish to offer an amendment to section four, as follows: "And all fines and penalties or forfeitures accruing to this state shall inure to the use, support and maintenance of the schools provided for in this section; and in the event that such proposition shall not be adopted by the people then the following shall become a section of the article of the constitution.

"All fines and penalties of forfeitures accruing to this state shall inure to the common school fund of this state." Appalled in the presence of such law———

(Here the hammer fell.)

(Judge Mason's speech here, given him by reporters to correct and never returned, though written for.)

Mr. HASCALL. Mr. Chairman and gentlemen. I am surprised at a man with the intelligence of our chief justice who would come here and make statements in regard to the law similar to those you have heard. It is easy enough for a man to check false pretenses of rather tremendous structure to make in his own estimation an argument unanswerable in itself, but when you come to consider that he has placed himself upon false premises, then you will discover at once the fallacy of all of his arguments on this subject. Perhaps he has been nursing his wrath during the time this convention has been in session for the purpose of making thrusts against a sister portion of this state. The gentleman in the fore part of this session was very free to shed light on this convention by quoting the sayings of Adam Smith. Adam Smith was a talented old Scotchman, therefore we could listen to the infliction in that respect. It is true the moon borrows its light from the sun, and notwithstanding that its light is borrowed from a greater body it is still beneficial to the earth. When the gentleman borrowed from Adam Smith it was all right, but in this case he has borrowed his light from Limber Jim Doom (Laughter.) What are the facts in the case? He states that which is not true when he says any portion of the money which is gone or is to come is any portion of the state fund or has been. There is no such law in the statute book, and you cannot find it. Further than that, he reads from a law that is totally repealed, and substituted by a new law, which was drawn up in the manner desired by the people of Omaha. When appealed to by my colleague here' (Judge Lake) to read from the law itself he read from the title of the act. What does the law say? It says fines and penalties arising from breaches of the ordinances of the city. How is it all over the state? In Lincoln, Nebraska City, Plattsmouth, these fines and penalties go directly into the state treasury to support the state government. In Omaha it goes to the High school, and we levy a tax to supply that deficiency, upon the people. Now with regard to the money going to support this high school. That money came out of the fund of the district of Omaha, and not from the state; and the people levied a tax in the school district to make up the deficiency. Consequently there is no portion of the state, and no school district, other than Omaha, that has suffered from this. Then, why does the gentleman say that? The gentleman says that the money arising from licenses go into the state treasury. I deny it. What did his own county do last year? They asked the legislature to pass a law to help them to get out of the state treasury $600, which they claimed to have been put into it by mistake. And they succeeded and the law went into force, and that $600 is in the treasury of the county of Otoe today.

Mr. McCANN. Put in by mistake? Not so. It was intentionally put in, according to law.

Mr. HASCALL. It was taken out by a law which the delegation from Nebraska City asked us to pass; and they showed us there were only two counties—Otoe and Saline that had done that; and when he says the counties have been doing that thing, and putting money into the state treasury, he says that which is untrue. And a gentleman of his intelligence ought to know that. But it is this cheap buncom. It is the borrowed light I spoke about. We could submit to the quotation from the old Scotchman, Adam Smith, but when he quotes from Jim Doom I object. (Laughter.) Why does he dodge this question, with that book before him, and insist that it goes into the school fund of the state, when he knows better? Why does he contend that the liquor licenses go into the general fund of the state when he knows there are half a dozen cities in this state, and gentlemen have been challenged before. This clap-trap was raised in the legislature, and notwithstanding they sent their wisest and smartest men, they all, and Otoe's Jim Doom, gave way. And when they came to get the half dozen provisions of the statute on this subject they found there was not a dollar of that fund that the gentleman speaks of ever went into the state treasury. What further, with regard to this? The gentleman does not regard the last law passed by the legislature; which was drawn up by Omaha men. Why does he read an old law which is supplemented. Supplemented by the one which says this school is now one of the common schools of the city of Omaha; and the humblest child may attend that school. Does not he find that the suspension of that act was submitted to the people of Omaha, and a majority of 854 ratified that suspension? It is supported and is to be hereafter managed the same as the other common schools of the city of Omaha, and by the same directors, the board of regents being abolished. It must be that the gentleman comes in and makes these daring statements for the purpose of blinding someone. I see him even now passing the statutes of 1869 around the house, among his friends (Laughter.) I say it is to be a common school. I believe the people of Omaha, without hardly an exception, are in favor of it. And I have heard Judge Lake say—and he was one of the board of regents—he wanted that board abolished, and have it managed by the same board as the other common schools. And by his influence and that of his friends, a majority of 847 was secured in favor of that proposition. Omaha wants nothing in this respect. She has never had any favor, and has always got along.

Mr. ROBINSON. Did you not, in fact, receive money from the common school fund?

Mr. HASCALL. Yes. It was taken from the the common school fund of the district of Omaha and a tax was levied on the city to defray that.

Mr. ROBINSON. Do you not charge your tuition fees to the children.

Mr. HASCALL. No, we do not. Then, why all this clamor about this. Gentlemen before they raise a stink should get their nose around under the crust, and see whether the stink don't come from their own hole. (Laughter.) Why does Otoe county come here and deliberately ask the passage of a law for this amount of a fund, and then come here and raise a stink in regard to something, when the law is upon the statute books, and they have the money in their pockets.

The gentleman from Otoe (Judge Mason) shakes those hoary locks of his on every occasion. He has a whole vocabulary of Shakespeare at hand, and a host of soft things about "the child sleeping on its mother's breast," "the unborn child of future generations," "death stalking on a pale horse," "the rich grape juice he has imbibed from his well trained nursery, etc." I am afraid he has imbibed tarantula juice or something of that kind.

Mr. WAKELEY. Mr. President. I confess, with a feeling of surprise, that upon a question in regard to the policy of adopting compulsory education and reform institutions that is under discussion, it should be made the occasion of such a fierce and, apparently, indecent assault upon the city from which I come; and upon an institution of learning in which the people of that city, without respect to station, party, age or condition, feel more interested in than any one institution in their midst. And, sir, considering that the gentleman who makes that assault occupies the distinguished position, the first judicial officer in the state of Nebraska——

Mr. MASON. I did not design to make any assault; I only desired to show that the legislature ought not to divert the fines from the common school fund.

Mr. WAKELEY. Mr. Chairman. I hope the gentleman was not actuated by motives of discourtesy. But when the distinguished jurist and very able member of this convention makes a speech and goes upon the record of this body he should measure his words and know whether he is speaking the truth or not. The gentleman says that the state of Nebraska donated the old state house grounds to the city of Omaha. In one sense this is true, in another it is not . If I understand the matter, the citizens of Omaha donated that property to the state for capitol purposes. Now under the ordinary rule this property, when no longer used for the purpose for which it was donated, it reverts to the city. The city of Omaha invested some $60,000 in this capitol building——

Mr. MASON. Did not the city of Omaha repudiate every dollar of the money they put in the capitol?

Mr. WAKELEY. Whether it was repudiated or not, the people of Omaha put their money into the building. The state of Nebraska gave this property to the city of Omaha for school purposes. We have been treated, Mr. Chairman, to a most violent and vehement harangue to the effect that this public school which we are building on this property, is for the rich, and not for the poor. I thought, Mr. Chairman, that before any such violent assaults it behooves the gentlemen, to step down into the office of the secretary of state and read the act making that school a part of the common school system of Omaha. That act was submitted to a vote of the citizens of Omaha, and approved by nine tenths of the people of that city. The gentleman from Otoe (Mr. Mason) sent up to the reporters as a part of his speech a few days ago, a remark he would do well to remember this morning. He said that "loud professions made upon this floor, of friendship for the people and the poor are but the stepping stones to a first-class demagogue." Those are not my words but his. I am astonished that a gentleman of his eminence should bring these charges there to the injury of this school. I say that the charge that the school is not a common school is unworthy the source from which it comes. There is no child in the city of Omaha, no matter how poor, that has not as much right to attend this school as has the richest child in Omaha. So much for that. Now, Mr. Chairman, the gentleman says that some unjust discrimination is made in favor of Omaha. Now if that be so, the gentleman shall have my voice and my vote at any time to put his city upon the same level with Omaha and give him all these rights. Now, I understand this to be the law. The money raised from fines imposed for a violation of the city ordinances, from city licences, etc., shall go to this school. If that is not the case in the gentleman's city, then it should be. It does not touch the fines that shall be levied by the district court.

Mr LAKE. Mr. Chairman. I will state to my colleague (Mr. Wakeley) that the law provides that cities may levy licences, in addition to the state licences; these are the ones that go into that fund.

Mr. WAKELEY. I do not claim to know much about this law, and was not referring to anything I did not know about. But, sir, if all the fines received from this source go to the city treasury, it should be the right of the city to put them into the common school fund, if they see fit. If other cities do not, that is no fault of ours, and there is no unjust discrimination made here. My colleague has shown me the law, which I will read.

"The applicant shall pay into the county treasury, for the use of the school fund, to be distributed as other moneys, the sum of not less than $500 at the discretion of the county commissioners, and file the treasurer's receipt therefor in duplicate with the county clerk before such license shall be issued."

Now, Mr. Chairman, that is the law which the gentleman assaults.

Mr. MASON. If you will permit me, Judge Wakeley, I did not assault the law.

Mr. WAKELEY. Without stopping to go into the details of this matter, Mr. Chairman, I wish the gentleman to look at the law. The law establishing this high school provides that these local fines shall be devoted to that fund. It was a virtual compact between the law making powers of the state and the city of Omaha that this fund should be so applied. Upon the strength of this contract, the school district of Omaha raised $20,000 upon subscription, and built ward schools. Now before you bring the whole power of the state against a single school district, I ask you to look at the matter and ask yourselves whether you are prepared to do this thing. I say that no fine, which is not local in its nature is devoted to schools in the city of Omaha, and if the same fund is not devoted to local interests in other cities of our state, I am willing to do all what I can to help make such a provision.

Mr. MASON. Will the gentleman please let me read this act?

Mr. WAKELEY. Certainly.

JUDGE MASON, (reading) I read from the Act, Sec. 27. "All moneys from any source whatever, which under acts of the legislature of this state are payable to the board of regents of the high school on capitol square in Omaha, or to school district number one in Douglas county, shall, after the election and organization of the board of education, be paid to the treasurer and placed to the credit of the school fund of the city of Omaha, to be applied to the payment of interest, and for a sinking fund on all bonds issued by said board of regents, and school district number one of Douglas county, prior to the organization of said board of education."

Mr. WAKELEY. That takes it from the regents and gives it to the board of directors of common school. It simply provides that the monies shall be paid to the directors for the use of the schools of the city.

(Here the hammer fell.)

Mr. MASON. What I desire to know, Mr. Chairman, is this, whether in this as well as in every other county this money goes to the county fund. In our county all the licenses are levied in Nebraska City and we divide them throughout the county. But I understand that the city of Omaha has not done so but has placed them to the benefit of this school.

Mr. ROBINSON. Mr. Chairman. I am very sorry that this discussion has taken the direction that it has. I have been examining the law on this point and I desire to read the first section of the law providing for the applying of the fines in the city of Omaha. It is as follows:

"Sec. 1. Be it enacted by the legislature of the state of Nebraska that the Auditor of state be, and is hereby required to issue his warrant on the state treasurer, payable out of the general school fund in favor of the treasurer of Otoe county, for the sum of six hundred dollars and fifty cents."

Now, I understand this county to have the privilege of transferring this money from its ordinary purpose to this school fund. There is no doubt that the city has a right so to do; and if the city of Omaha can afford to do that it seems to me there is nothing unjust to the county of Douglas, or the state at large.

We here have now a law under which all fines and licenses are used for the city fund. If we require a grocer to pay a license that, goes into the city fund, under the law authorizing the incorporation of cities of the first class. I am inclined to think it would be competent for the legislature to give us the privilege of placing this into the school fund of the city as long as it is the funds and licenses arising in the city. I have found three or four sections of law on this point and I will read them. They are contained in our criminal code and are as follows:

"Sec. 178 All fines imposed by virtue of any of the laws of this territory, for the punishment of crimes or misdemeanors, shall, when collected be paid into the treasury of the county where the offense shall be tried for the use of such county, unless otherwise specially directed: Provided, however, that nothing in this section contained shall be so construed as to found or constitute a cause of challenge or objection to any grand or petit juror."

"Sec. 245. All fines and forfeitures accruing by virtue of any of the provisions of this code, shall be paid into the county treasury, one-half thereof for the use of the school fund, to be distributed as other moneys, and the other half for the use of the respective counties where the prosecution or prosecutions are had: Provided, That wherever in this code moneys arising from certain fines and forfeitures are especially appropriated, such special and different appropriation shall prevail and be carried into effect."

I don't exactly see how these two sections can be reconciled.

"Sec. 321. All fines imposed by virtue of this chapter, shall when collected, be paid into the county treasurer for the benefit of the school fund."

"Sec. 336. Third. The applicant shall pay into the county treasury, for the use of the school fund, to be distributed as other moneys, the sum of not less than twenty-five dollars, nor more than five hundred dollars, at the discretion of the county commissioners, and file the treasurer's receipt therefor in duplicate with the county clerk, before such license shall be issued."

Now, whether that is to be distributed to the state at large or not I am not able to say, but I understand that the school fund is appropriated by the county alone and apportioned by the county superintendent himself and this fund was not paid into the common school fund.

"Sec. 350. Provided, however, That such incorporated cities and towns may require such additional sum to be paid for license under this chapter as to them may seem best, not to exceed one thousand dollars, which sum, together with the sum herein required to be paid to the county treasurer, may be paid to the treasurer of the town or city, who shall account for the same, and his receipt therefor shall be equivalent to the receipt of the treasurer of the county for all purposes named in section three hundred and thirty six."

Whether that little clause means anything or not I am not able to say.

Mr. MASON. In the city of Brownville, where they had taken that money they were compelled to pay it into the treasury.

Mr. ROBINSON. If it has no effect there it is a dead letter upon our statute books and has been superceded by the law authorizing cities of the first class. Hence it is nothing more than just that if the city should have to keep up her courts for the trial of offenders, then the money arising from that source should be used by the city. The only question is whether the city of Omaha should be allowed to use this fund for her schools. If the people of that city vote to apply it in this way I don't think it is anybody else's business.

Mr. ESTABROOK. Mr. Chairman, I had occasion perhaps, in the heat of debate the other day in speaking about the removal of the capitol to indicate that it had been done through the temper of the people south of the Platte, especiallly or Otoe county, because of their feeling against the city of Omaha, and the gentleman from Otoe (Mr. Mason) hurled back the insinuation with a shake of his mane, that there never had been the least. Here is an illustration of it. Here with a quiet little proposition to pick up the poor children of the state and keep them on the abundant fund the county has to spare to which he has given his support, he seeks to attack the city of Omaha and states that she has made a raid upon the state fund. Now, the gentleman says that the state has made a conveyance, made a gift to the city of Omaha of the state property, it is not quite true, as my colleague says, that this was made on the condition it should be the capital. The city of Omaha without asking that any conditions should be inserted in her deed, deeded that square upon which she had expended in labor and material, an amount not less than $75,000 in addition to what the United States had already paid for the purpose of putting that capitol upon the square, and it was of such a character that when the engineers went to examine it, it was found unsafe, not a fit place to send children, therefore it was torn down as a matter of security, bringing less than $10,000.

Mr. MASON. Did not the laborers get their pay in bankrupt scrip?

Mr. ESTABROOK. The men worked there and got their pay for it. Altogether it was not worth $10,000, it was built in accordance with the method of doing things at that early day, it was a mere squat trap and was torn away and we had the simple ground remaining. When the conveyance was made in obedience to the recommendation of the governor, I happened to be around these rat holes at the time and suggested to our friends that I thought the deed back again should be of the same character as the deed that transferred it to the state, that is, without conditions. However, there was no necessity for that as they only needed it for educational purposes. The bill became a law and it was so invested in the city of Omaha, the members of the Douglas delegation were taunted by the Herald when it was made a part of the school system, it said "now you have got it what are you going to do with it, you have simply got an elephant on your hands;" so I myself drew the bill as it has been here read. What was that? It was to divert that portion of the school fund which arises from the disposition of fines and licenses upon our own citizens, leaving right there within the corporate limits of Omaha those fines and penalties which we impose upon our own citizens and those amenable to the penal laws of the city are devoted to the carrying on of this college. While this measure was before the house opposition was begun to it. I went to Mr. Church of the county of Nemaha and enquired of him why it was he was making the opposition. He said it was diverting a portion of the state money. I told him that was not true. I showed him these provisions of the law which placed all these fines, unless otherwise directed, into the county treasury, and pointed out to him that the entire delegation from the county were willing the change should be made; showing him this and that not a dollar of it was taken from the state fund, also stating that it came with little grace from Nemaha who had a public school at Peru within her limits supported by the tax paying interests. Well, the bill was passed and became a law on the strength of this. It was implied that it should be set apart, by the inhabitants of Omaha, and made a distinct institution from the public school and hence the law was so amended and being submitted to the people of the county it was made part of the common school system, just the same as any school within her limits. Here is the trouble to day, in view of the laws of the legislature that existed, and in view of the whole course of legislation on this subject, and in view of the fact that the legislature at its last sessions have given the authority, the city of Omaha goes on and by a vote of the people have issued and put upon the market and will receive the funds for them, $100,000 in bonds, the city being pledged for their redemption. Let this convention say we have got to repudiate those bonds if it dare and I say your $15,000 is gone. If you say by the instrument you will set before the inhabitants of Douglas county, if you say to those bond holders that the funds that have been placed for the purpose of the redemption of those bonds, that that law has been violated, if we are to break faith with these bond holders I undertake to say your constitution is so much blank paper. Now, I enquire what business have you in Otoe county to say what disposition we are to make of the fines and licenses of our city? What business have you to stick your nose into our private transactions? Is it from anything else than the meanest, and the lowest, and dirtiest vagabond malice that ever did animate the human breast, that never can forbear an occasion to make an attack on the poor, devoted city of Omaha. Is it from any other motive than the meanest that ever did animate a human bosom? I despise and loathe a man that never can live long enough to get over this miserable local, jealous feeling. I care not for the consequence, but let this convention dare to say to Omaha and Douglas county that it shall break faith to the extent of $100,000 and I pledge you there shall not be a vote for this constitution. We have done nothing but what the laws of Nebraska have said we might do. We have not asked any other portion of Nebraska for a dollar, we simply appropriate that which belongs to Douglas county and there never has been a dissenting voice, we never have taken a dime from the treasury of the state and do not ask to do it. We simply ask that for the purpose of carrying on this school we wish to divert the fines and licenses. We do not ask Otoe county to pay a dollar. If her citizens come and steal our chickens we fine them and put that fine into the school fund, but if they will keep away from us, if they will not become amenable to our criminal code we will never ask Otoe county to contribute a penny for the system of education we have incorporated upon our institutions I do not know what sort of an institution they have in Otoe county, but if they do not come up and ask us in Douglas county to put our hands into our pockets, they may do what they please, but if they dare to come up and dictate to us how we are to dispose of our fines and license moneys, I mean, to use the gentleman's argument, hurl it back with scorn. It is as really a law as any on the statute book, and we find it in three or four different places touching the disposition of fines and licenses. We ask nobody to interfere with us but ask everybody to remember the eleventh commandment, which is mind your own business.

Mr. LAKE. Mr. Chairman. There seems to have been considerable excitement gotten up over a very little matter, I hope I shall be able to speak temperately. I am not very much excited, not given to excitement. I think that a good deal has been said by the gentleman from Otoe (Mr. Mason) was said under an honest misapprehension of what the true state of the laws were, their actual condition with respect to the high school in Omaha. I understood the gentleman to say that while we were devoting the fines and licenses levied in the city of Omaha exclusively to the education of our own children, that at the same time, the fines and licenses which were levied in Nebraska City were used for the purpose of educating the children of the whole state alike,, Omaha included. I am not mistaken in that. He said in so many words, that the money arising from that source in his own city, was sent up to assist also in the education of our own children. Well, sir, during the years 1869 and 1870 it may be true that the gentleman's constituency did contribute a little money to that purpose; but, sir, as I can show from an enactment of the legislature of this state, Omaha, Douglas county, and other portions of the state which were penefited by reason of the small amount paid in during those years, by Otoe county and Nebraska City, were compelled to refund the same. I will read from an act passed by the legislature at its last session. And I will say here, Mr. Chairman, that these are the only sums arising from fines and licenses that have ever been paid into the state treasury by any county of this state to be distributed generally among the people of the state for educational purposes—that is funds of the kind which have been referred to in this discussion. The act I refer to is: "An act to refund to the counties of Otoe and Saline, certain moneys." Here is the whereas:

"Whereas, the treasurers of the counties of Otoe and Saline, paid into the general school fund of the state, the moneys received by them for fines and licenses for the year 1869, and 1870—Therefore,

Sec. 1. Be it enacted by the legislature of the state of Nebraska, that the auditor of state be and is hereby required to issue his warrant—on the state treasurer—payable out of the general school fund—in favor of the treasurer of Otoe county— for the sum of six hundred dollars and fifty cents.

Sec. 2. The auditor is hereby required to issue his warrant—on the treasurer of state, payable out of the general school fund—in favor of the treasurer of Saline county, for the sum of five dollars.

Six hundred and fifty dollars is the sum returned to Otoe county. So that, while it may be true, as I stated, that Otoe county had contributed funds which were divided among the people of the state, and of which Douglas county received a small portion; yet it is also true that Douglas county has been compelled by the legislature to refund every cent which was thus received. Saline county, it is shown, also paid the sum of five dollars, into the state treasury which was distributed among the counties of the state. But Saline county also, has put her hand into the state treasury, and compelled a restitution of the same money through this act of the legislature. So that every dollar which has been paid into the treasury in this manner, and which has been distributed as the gentleman from Otoe has declared, has been refunded and paid back to such county. Therefore, I say, Mr. Chairman, that the people of this state have, in fact, never been benefited by one single dollar of the fines or licenses paid into the treasury of their county, except such as were paid by their own people, and within the limits of their own county. "Fines and licenses." Taking into consideration this act—the fines and licenses which have been collected in each county have been expended in the county in which they were collected and in none other. The state treasury, in respect to its school funds, has never been benefited a single dollar by the fines and licenses of any one county; because, as I have shown, the small sums paid into the state treasury by Otoe and Saline counties have been refunded. So much for that. I take it, Mr. Chairman, that no one upon this floor will be led to believe, after reading this act, that Douglas county has ever been benefited by the fines and licenses collected in Otoe county; nor has any other county of this state. The gentleman's principal argument, is based upon the fact which he alleges as true, that this school, which is being provided for upon Capitol Hill was not a free school, nor open to all children of the city alike, and to all classes alike. In other words, that it was a school in which the benefits were not for all alike, and in which tuition fees must be paid. That objection was obviated and set right by the legislature of last winter. I will read one section of an act which was passed on this subject which is as follows—and I beg the attention of gentlemen while I read it.

"Sec. 1. Be it enacted by the legislature of the state of Nebraska, that the city of Omaha, excepting a certain part of said city to be hereinafter designated in this act, shall constitute one school district, and all schools organized therein under the general school law, or under special act creating and authorizing the board of High School Regents in Capitol Square in the city of Omaha and all schools hereafter to be erected or organized within the limits of said city, shall under the direction and regulations of the boards of education authorized by this act be public and free to all children residing within the limits of said city between the ages of five and twenty-one years."

This school about which so much has been said in respect to its restrictive character, as not being free, is hereby declared by the law of the state to be "public and free to all the children residing within the limits of said city, between the ages of five and twenty-one years." Now, it seems to me, Mr. Chairman, that these two enactments—the one restoring to the counties of Otoe and Saline the monies which they have paid into the state treasury, accruing from fines and licenses, and this one declaring that this high school upon Capitol Hill, shall be a free school, open to all the children of the city of Omaha, between the ages of five and twenty-one years, knock pretty much all the bottom out of the gentleman's argument. I think pretty much all that he said; all of the finely rounded periods he indulged in, were based upon these two propositions. And when we read those acts, and call his attention to them, there is but little left of what the gentleman relied upon.

Now, another thing. I state this as a proposition which I believe to be entirely tenable, and which cannot be successfully refuted. It is—that no fines or licenses which are levied by any court of record in Douglas county, goes into the school fund of the city of Omaha. The act the gentleman read, relates exclusively to fines and licenses levied in the city of Omaha, in pursuance of the ordinances of the city and none other. It relates solely to those courts which are established under the authority of the legislature to administer the ordinances of the city and none other; and the city of Omaha has the privilege, under the laws of the state, to make such ordinances in respect to drayage, in respect to the peace and good order of the city as she may think best. And having made them, she provides a tribunal which shall administer those ordinances and see that they are carried out in good faith. It is the fines which are assessed for violations of these ordinances that go into the treasury of the city. And, as has been truly said by the gentleman from Lancaster, they "go into the general fund of the city," to be expended as the city council think best, unless pledged to some special use. Formerly, in the city of Omaha, they went to the repair of the streets, building of side walks, making drains, and carrying on the city government generally. But, in the wisdom of the legislature, and at the request of an unbroken delegation from Douglas county, there was conferred upon the city of Omaha the privilege of diverting those fines and licenses from the general fund and appropriating them to the education of her children, and she did so; and today they are appropriated to that use. And what is the result. It is that for the purpose of carrying on our city government we are compelled to levy an additional tax upon the people of the city, which is to fill up the coffers thus depleted for the purpose of supplying the place of those funds diverted to the school purposes. Therefore it concerns not other portions of the state whether these funds be devoted to the one purpose or the other. The people of our own city bear the burdens consequent upon this diversion themselves. No other portion of the state is called upon to make good the fund thus diverted. She is compelleld to carry on her city government, and forced to levy a tax upon her population for that purpose—but not outside the city. Therefore, Mr. Chairman, no one is injured; and I trust there will be nothing done which will strike a blow at this legislation of the state, which, thus far has only been just and equitable, to the city of Omaha. Why, sir, the last legislature authorized the board of regents, which has been referred to by my colleague (Mr. Hascall) to issue bonds to the amount of $100,000, to enable them to build this high school building upon Capitol Hill; and by this act of the legislature these very funds which were thus diverted by former enactments are pledged to the redemption of those bonds. The legislature of this state have declared that these fines and licenses, formerly paid into the general fund, and which were diverted by the act read by the gentleman from Otoe, shall be for ever pledged to the redemption of those bonds. And I would like to know if any action which may be taken by this convention can break faith with the holders of those bonds. Have they not a vested right in respect to this matter, and can they not enforce the payment of those bonds out of these funds. I think the gentleman from Otoe would, if a case were brought before him, I think gentleman from Otoe (Mr. Mason) would, if a case were brought before him, declare that that fund must be used in good faith and for these purposes for which it was intended. I believe my time is up, Mr. Chairman.

Mr. VIFQUAIN. Mr. Chairman. I would like to have the gentleman (Mr. Lake) take back one thing he said. He said that Saline county had thrust her hand into the state fund and taken out public money.

Mr. LAKE. Mr. President. I said that there was an act passed whereby $5.00 of this fund was taken from the state treasury. I suppose the county treasurer of Saline county has done his duty and drawn the five dollars.

Mr. MASON. Mr. Chairman. I would like to have leave of this convention to make a few remarks.

Now, sir, after listening to this debate let me say that if any man supposes that in my mind I meant to injure the public schools of Omaha, they make a mistake. This is what was in my mind—to make a law which would make this thing equal. Let us adopt a uniform rule to apply to all our large towns and cities. My friend from Omaha (Mr. Lake) nettled me a little, and, in the heat of debate I may have said something rash. I am told that the city of Omaha gave to this state the ground upon which the state capitol was built and that it reverted to the city, when it was no longer used for state purposes. As a matter of course my friend Mr. Young, gave to the state the ground upon which our present capitol building stands. Now if the capital should be removed tomorrow will the ownership to the ground revert to Mr. Young? You say the City of Omaha gave this land to the state and that it would be a wrong and unjust thing if the land should not revert to the city when it is no longer used for capitol purposes. Why, sir, the state has never treated Omaha unjustly; she has been the pampered child of the state, she has had the portion of the first born. Now talk about your having built or helped to build the first state capitol, when all the older settlers in the country know that the script which you issued, was repudiated, every dollar of it. If you went to the city of Omaha, when you paid your hotel bill, they always gave you change in city scrip. I have $15.00 which I got in this way. It was the poor people of this state who built your state house, for they are the men who did the labor for which they received no pay. When I tell you these plain truths you say we are trying to black guard some body. But now let us drop this matter, God knows that if I can help this high school at Omaha without injury to the rest of the state, that I will gladly do it. But what am I struggling for? I want, first to add to the section, to be submitted separately, as follows: "And all fines and penalties or forfeitures accruing under any law of this state, shall inure to the use, support and maintenance of the schools provided for in this section, in the respective counties where the same are levied, so far as the same are necessary, and in the event that such proposition should not be adopted by the people then the following provision shall become a section of the article of the constitution, entitled—"

That is my first proposition and if that does not carry, then all fines and penalties or forfeitures collected in this state, shall accrue to the common school fund.

If I die, and leave my property in Otoe county without having made a will, shall Otoe county have it or shall the whole state have it. Now, if it please the gentleman from Douglas, I am satisfied with this amendment, which I have taken the liberty to interline in the amendment offered by the gentleman from Otoe (Mr. McCann) "All fines and penalties or forfeitures accruing under any of the laws of this state shall inure to the common school fund of the county where the same is levied." If that proposition carries, it gives the fines, etc., to your county for the support of your schools. Let us say in this constitution where the fines, forfeitures and penalties shall go. There is not a constitution in the United States but what fixes this. Then my simple proposition is, shall they go to the common school fund of all the state or to the county. My friend (Mr. Robinson) has read four sections from the statutes. Each one declaring where this fund shall go. Another law has been passed saying it shall all go into the state treasury. Now let us say by the constitution where it shall go. Now, sir, I live near a city, and my children go to the city to school and I would be benefited by having this fund go to the city schools. I am willing to say that these funds shall go to the benefit of the cities wherein they are levied. In conclusion, I regret, Mr. Chairman, that because I have not been as wise as some, this storm of abuse has been heaped upon my head, and that gentlemen should stand up here and say "give us what we want, or we will write your constitution into the grave." Now, I want to say again, that whether this fund shall go into the common school fund of the state, or the fund of the county, let us have a provision in the constitution fixing the place where it shall go, and if it suits the committee better to say that all fines, etc., shall inure to the county school fund wherein the same are levied.

Mr. ESTABROOK. If the gentleman will strike out all relating to the counties in the first part it will be just as the law is now.

Mr. MASON. I don't want it there because I say it is not just. Mr. Chairman, when I was interrupted by Justice Lake I might have used language that I ought not to have and if I offended any one of the Douglas delegation it was not my intention. All I desire is to establish a uniform rule of action. I am willing that the gentlemen from Douglas shall take this and fix any such rule for the county or city. I will tell you why I want it so. It is that in the legislature that is to come that if the county of Douglas or my own county should undertake to regulate the legislation of the state here will be a law about which there can be no doubt. Perhaps there is truth in the statement of the gentleman from Douglas "touch a single "i," or cross a single "t," that does not suit the city of Omaha and we will strike damnation to your constitution."

The CHAIRMAN. Let me state to the committee that the question is not on this amendment but on striking out a part of the section.

Mr. MASON. Mr. Chairman. I move that the committee arise and recommend that this section and amendment be recommitted to the committee on education with instructions to report a section or sections establishing a uniform rule with respect to fines and penalties in this state to be submitted separately.

The CHAIRMAN. The question is on the motion of the gentleman from Otoe (Mr. Mason).

The motion was agreed to.

In Convention.

Mr. STEWART. Mr. President. The committee of the whole have had under consideration the proposition reported by the committee on education to be submitted separately and have instructed me to recommend that it be re-referred to the committee on education.

Mr. MAXWELL. Mr. President. I move that section thirteen of the bill on revenue and finance and the substitute I proposed be recommitted to that committee.

The PRESIDENT. There being no objection it will be so referred.

Mr. MAXWELL. I move that we go into committee of the whole on the rights of suffrage.

Mr. STEWART. Mr. President. I rise to a point of order on adjournment. We have a rule which reads "no rule of the convention shall be ordered suspended without a two-thirds vote of the members present."

The PRESIDENT. The rule also says "until otherwise ordered" a majority vote carries the motion.

The motion to adjourn was not agreed to.

Committee of the Whole.

Mr. TOWLE. Mr. President I move that the convention resolve itself into committee of the whole to consider the report of the committee on counties.

Mr. MAXWELL. I move to amend that we take up the report of the committee on rights of suffrage.

The amendment was agreed to.

So the convention resolved itself into committee of the whole, Mr. Abbott in the chair.

The secretary read section two, as follows:

Sec. 2. The legislature may extend by law, the right of suffrage to persons not herein enumerated, but no such law shall be in force until the same shall have been submitted to a vote of the people at a general election, and approved by a majority of all votes cast on that question at such election.

Mr. MAXWELL. I move that the second section of the bill be stricken out.

The motion was agreed to.

The secretary read the next section, as follows:

Sec. 3. No person under guardianship, non compos mentis or insane, shall be qualified to vote, nor shall any person convicted of treason or felony unless restored to civil rights.

Mr. HASCALL. Mr. Chairman. I have an independent section in place of section three.

"Laws shall be made for ascertaining by proper proof the citizens who are entitled to the right of suffrage hereby established. The legislature shall provide for a registry of citizens entitled to vote in each election precinct, to be completed two days before each general and special state election and charter elections in cities. No person shall vote at such election who is not registered according to law; and the mode of registration shall be uniform throughout the state."

Mr. CASSELL. Mr. Chairman. I move to strike out all referring to registration.

Mr. TOWLE. I would ask the gentleman whether he would accept as amendment that this registry shall be applied to cities of the first class only.

Mr. HASCALL. I could not accept the amendment.

Mr. TOWLE. Mr. Chairman. I hope this convention will not adopt this section in the manner and form proposed by the gentleman from Douglas (Mr. Hascall.) I undertake to say that the present registry law except in cities of the first class is a swindle, because a large percentage of the people are not entitled or do not come under the provisions of the law, are not registered, and it is an outrage because it is taking money out of the county treasury for a purpose which should not be permitted at all. At present the registry law is in the hands of the party in the majority entirely and the consequences of the operation is that we find all over the state, the party which is in power build up bulwarks to perpetuate its power from day to day. It may be all right for those in powed today but the administration may change and you find a different set of registrars perfecting a different series of outrages in these county precincts where the man knows every solitary man that votes. We find in Richardson county that there is an expenditure of between $800 and $1,000 per year for this registration law, and what are the practical effects of it? In our county we find one tenth of the party in the minority disfranchised. The registrar is a republican in sympathy with the administration, and places on that list all the members of his own party, but no member of the opposite party is placed upon that list unless he makes a personal application to do so. I am not opposed to it on principle if it is proper in its details, it is all right enough in cities of the first class where every voter in the precinct is not known, but not in the agricultural portion of the state. The executive officer of the government of this commonwealth may change and you find the iniquity upon which you are passing come home to yourselves. I move this as an amendment. If we are going to have a registry law, I want a good one, if our liberties are to be circumscribed. I am willing to pay for it from my taxes. I am willing that my property should be assessed to pay for a register. Sir, I do know that ten per cent of the people through ignorance, negligence and dishonesty, are today disfranchised through the operation of the law. If this thing can be amended so that it will apply to places where there is an absolute necessity for it, that is all we ask.

Mr. LAKE. I never have lived in a state, until I came to Nebraska, where a registry law was in force. But, sir, from the experience I have had under the one now in force, I am satisfied that even with a very poor one, a great deal of benefit accrues to the people of the state. I consider the one we have been living under, a very poor one indeed. It is productive of a great deal of unnecessary embarassment to the voter. I believe that all laws in respect to the enjoyment of the elective franchise by the people should be uniform throughout the state. I do not believe in providing a law for one portion of the state and not to operate in another. I believe it should be uniform: Applicable to cities and country alike. But this, I take it, is not the best place to discuss, at length, this matter of registration laws. It would be more proper in the legislature. I believe, however, it is the sense of a large majority of the people of this state that good, wholesome registration laws should be enacted and enforced: if I were going to provide one that would suit me, perhaps it would not suit the people of the state at large. My idea of a registration law is that it should not require the elector, on every occasion of an election, municipal or otherwise, to go to some place to have his name registered in order to entitle him to vote; but that the law should provide that, upon being once registered, an individual shall remain registered in that district so long as he shall reside there, and until something shall transpire that requires his name to be stricken from the registration rolls. The operation of the present law, as I before remarked, has not been just to the people of the state. Many persons who have been registered year after year and who, perchance, are absent from the state at the time of the registration, and up to the day of election, have gone to the polls and found that their names have not been continued upon the lists, and, by reason of the omission to continue them there they have been deprived of the right to exercise the elective franchise. Others who have been registered year after year, and continued to reside in the same precinct, acknowledged and known by all prominent citizens, to be qualified voters, have been by reason of the neglect of the officers, left from the registration rolls; and they too, have been deprived of their right to vote. Now, this is unjust, it is a hardship; a great wrong that ought to be remedied by the legislature. But I take it that it would be well enough to leave this entire section now under consideration out of the constitution. The legislature would have ample authority and power to pass a general registration law, in the absence of any constitutional restriction. Our present law was passed in the absence of a constitutional provision on the subject, and if anything is put in the constitution upon this subject the very first period in this section is all that would be necessary. Leave out all the minutia of what shall be done, simply say the legislature shall provide a general registration law. Even that is not necessary. The whole section might be stricken out, and the matter left entirely with the legislature, as it would be if this provision is inserted in the constitution. I take occasion to say that a large majority of the people of the state would be in favor of some wholesome registration law. I think it is wholesome restraint upon fraudulent and illegal voting, and would be continued, if submitted separately to a vote of the people of the state.

Mr. ROBINSON. I think the remarks of the gentleman from Richardson apply more particularly to the registration law now in force than registration law generally. Our present one is the most bungling and outrageous one I ever heard of. I am inclined to think, with the gentleman from Douglas, that when the legislature has power to pass laws of this kind it is unwise to legislate in our constitution. But I am inclined to think that we can impose a limitation of the time to vote in our constitution. The main defect in our registration law at the present is that it leaves too much to the discretion of the registrar. I know in Lincoln county the registrar frequently omits to place upon the registry list, the names of persons who have been residents and voters in the precincts for years. This is remedied in Illinois, and every preson is allowed to vote upon producing two freeholders, resident voters in the precinct in which he resides, that he was qualified to vote by showing he had been a resident a sufficient number of days, and that is right and as it should be here. But it is our place to do it in the constitution. Where a man is able to prove his necessary qualifications to vote the registry laws should be so amended as to provide for his doing so. But in our present laws whether by accident or design he is disfranchised. It should be so made that no man who is legally a voter should be disfranchised. I do not believe in challenging at the polls. As our registry law now stands if a man's name is upon the lists you cannot challenge him; that is another shame upon our registry law. I am certainly in favor of a limitation.

Mr. ESTABROOK. I do not believe it is best to go into details in regard to this matter; but so far as the objections which have been raised are concerned, I conceive them to be well founded. It proves in the first place, that all who are known to be voters should have their names registered by the registrar, and that he should publish a list, so that every man should go over that list and see if his name is there, and if not the registrar sits again for the correction of the list and when all these safeguards are placed around it, it seems to me there is no very great harm done. Suppose you have no registry list, and a man does not get there, would you take his affidavit that if he had been there he would have voted, and voted in a certain way, do you allow him to—

Mr. MASON. Suppose I proceed to vote, and find that my name is not on the registry list?

Mr. ESTABROOK. It is your duty to go and see that your name is registered as much as it is your duty to vote.

Mr. LAKE. Suppose a man's business calls him from town on the registering day?

Mr. ESTABROOK. It is the duty of the registrar to put his name on the list if he is known to be a voter. If it is not on the list, and the man is absent from town, a friend can put his name there.

Mr. MASON. Suppose I am holding court in Richardson county, for instance, and cannot attend the day the registration is made?

Mr. ESTABROOK. Why, sir, the registrar is bound to sit several times before the vote is taken and to rectify the omissions which may occur in his lists. Suppose a man has not attended to having his name registered, but in the excitement of the election he wishes to vote. Why he can get a chance to do so by applying to the registrar at that time. But, sir, after you have put all these safeguards about the ballot box you have done all you can.

Mr. VIFQUAIN. Mr. Chairman. I would like to know what the gentleman is going to do with this section in the bill of rights "all elections shall be free."

Mr. PHILPOTT. Mr. Chairman. All a person, who is entitled to vote, has to do is to go to the registrar and ask to be registered and then he can go to the polls and vote. I am in favor of making a just and wise law regulating the registering of votes.

It is our duty to prepare a wholesome registry law.

Mr. KIRKPATRICK. Mr. Chairman. I think the section, or a portion of it ought to be adopted. I am opposed to the substitute. The substitute offered is a good one, but it is contradictory. Under our present registry law, every facility is given voters to register. In the first place, it requires the registrar to register every one he knows is a voter; in the next place it requires every person to go and certify on his oath, tell his age, etc. I don't believe the legislature ought to provide by law the manner of ascertaining who shall have the right of suffrage. But the present law is defective. Names of men who have left the precinct have been retained on the registry list. but how is the registrar to know. I think the present law is a bad one—cumbersome and expensive, and it has really done but very little practical good, so far as I know. But, sir, I am not opposed to a proper registration law.

Mr. HASCALL. Mr. Chairman. I have simplified my proposition somewhat. It now reads:

" Uniform laws may be made for ascertaining by proper proofs, the citizens who are entitled to the right of suffrage hereby established."

Mr. TOWLE. Mr. Chairman, I withdraw my substitute.

Mr. MASON. I move to strike out the words "hereby established."

Mr. MAXWELL. Mr. Chairman. I move that the substitute be referred to the committee on the rights of suffrage. That we recommend it be so referred.

The motion was agreed to.

Mr. STEVENSON. I move we now rise and report progress and ask leave to sit again.

The motion was agreed to.

In Convention.

Mr. ABBOTT. Mr. President. The committtee of the whole have had under consideration the report of the committee on the rights of suffrage and have instructed me to recommend that the substitute offered by Mr. Hascall be referred to the committee on rights of suffrage.

Mr. STEWART. I move that we adjourn.

The motion was agreed to. So the convention (at eleven o'clock and thirty-three minutes) adjourned.

THIRTY SEVENTH DAY.

Monday, August 7, 1871.

The convention met at two o'clock p. m. and was called to order by the president.

Prayer.

Prayer was offered by the chaplain, as follows:

Almighty and eternal God, we pray for Thy blessing upon those who have come here to perform the duties of another week. We pray for Thy blessing upon our state, upon our whole land. that every citizen may know and obey the law. We pray that our moral strength may increase as a nation, even as we have increased in strength of arms, and that we may regard our duty to God and to man. Amen.

Reading of the Journal.

The journal of the last day's proceedings was read and approved.

Leave of Absence.

Mr. THUMMEL. Mr. President. I ask leave of absence until tomorrow morning for my colleague, Mr. Abbott.

Leave granted, NEM CON.

Resolutions.

Mr. TOWLE. Mr. President. I wish to offer a resolution.

The secretary read the resolution, as follows:

Resolved, that the privileges of the floor be extended to Hon. E. E. Cunningham, Hon. B. F. Hilton and R. C. Clowry.

The resolution was adopted.

Mr. PRICE. Mr. President. I wish to offer a resolution.

The secretary read the resolution, as follows:

Resolved, That the committee on rights of suffrage are hereby instructed to prepare an article, to be submitted separately, in which shall be specified the time, place and manner, that the adult female citizen of this state may give expression to their sentiments by ballot, as to whether they wish to enjoy the rights of suffrage or not. Said article is to further direct when and how the canvass of said votes shall be made. Said article to specify that if a majority of all the votes so cast shall indicate that the females of this state reject the rights of suffrage, then no further proceedings shall be had in the premises

But if a majority of said votes shall indicate that they wish to enjoy the said privilege, then the legislature shall provide at its next session that the question,

"Shall the adult female citizens of this state be allowed the rights of suffrage," be submitted to a vote of the male electors of this state at the next general election, and that if a majority of the votes so cast by the male electors as aforesaid shall be in favor of admitting female citizens as aforesaid to the enjoyment of the right so sought, then the word male shall be stricken from the constitution wherever it occurs as to form a qualification for exercising said privilege.

Mr. WEAVER. I move the resolution be referred to the committee on rights of suffrage.

The motion was agreed to.

Committee of the Whole.

Mr. WEAVER. Mr. President. I move we now resolve ourselves into committee of the whole to consider the report of the committee on counties.

The motion was agreed to.

So the convention went into committee of the whole—Mr. Estabrook in the chair—for the consideration of the report of the committee on counties.

The report was read as follows:

ARTICLE.——

Section. 1. No new county shall be formed or established by the legislature which will reduce the county or counties, or either of them, from which it shall be taken to less contents than four hundred square miles; nor shall any county be formed of less contents, nor shall any line thereof pass within less than ten miles of the county seat of the county or counties proposed to be divided.

Sec. 2. No county shall be divided, or have any part stricken therefrom without first submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county voting on the question shall vote for the same.

Sec. 3. There shall be no territory stricken from any county unless a majority of the voters living on such territory shall petition for such division; and no territory shall be added to any county without the consent of the majority of the voters of the county to which it is proposed to be added. But the portion so stricken off and added to another county, or formed in whole or in part into a new county, shall be holden for and obliged to pay its proportion of the indebtedness of the county from which it has been taken.

Sec. 4. No county seat shall be removed until the point to which it is proposed to be removed shall be fixed in pursuance of law, and two-thirds of the voters of the county, to be ascertained in such manner as shall be provided by general law, shall have voted in favor of its removal to such point; and no person shall vote on such question who has not resided in the county six months and in the election precinct ninety days next preceding such election. The question of the removal of a county seat shall not be oftener submitted than once in six years; provided, that when an attempt is made to remove a county seat to a point ten miles in a direct line nearer the center of a county, then a majority vote only shall be necessary, and the question of removal may be submitted once in four years.

Sec. 5. In each county there shall be elected the following officers: County judge, county clerk, (who shall be ex-officio recorder of deeds) sheriff, clerk of the district court, treasurer, surveyor and coroner, each of whom shall enter upon the duties of his office respectively on the first day of January after their election: but when that day shall fall on Sunday the term of office shall commence on the following day; and they shall hold their respective offices for the term of two years, and until their successor shall be elected and qualified.

Sec. 6. The treasurer shall be ineligible for said office for two years next after the end of the term for which he was elected; and present county treasurers and county clerks shall be ineligible for said office at the first election under this constitution.

Sec. 7. County officers shall receive as their only compensation salaries to be fixed by law; but in all cases where fees are provided for, said compensation shall be paid only out of, and shall in no instance exceed the fees already collected. County clerks shall never be paid in excess of the following: In counties having a population of 5,000 or less, $2,000; in counties over 5,000 and not exceeding 10,000 population, $2,500; in counties over 10,000 and not exceeding 15.000 population, $3,000; in counties over 15,000 and not exceeding 25,000 population, $3,500; in counties over 25,000 and not exceeding 50,000 population, $4,000; and for every 50,000 additional population, $500; and the treasurer and clerk of the district court shall never be paid in excess of the following: in counties having a population of 5,000, or less, $1,500; in counties over 5,000 and not exceeding 10,000 population, $2,000; counties over 10,000 and not exceeding 15,000 population, $2,500, in counties over 15,000 and not exceeding 25,000 population, $3,000; in counties over 25,000 and not exceeding 50,000 population, $3,500; and for every 50,000 aditional population, $500.

Mr. WEAVER. Mr. Chairman. I move that the sections be read, section by section.

The motion was agreed to.

The chairman read the first section, as follows:

Sec. 1. No new county shall be formed or established by the legislature which will reduce the county or counties, or either of them from which it shall be taken to less contents than four hundred square miles; nor shall any county be formed of less contents, nor shall any line thereof pass within less than ten miles of the county seat of the county or counties proposed to be divided.

Mr. THUMMEL. I move to strike out the word "contents" in the third line, and insert "a" before the word "less" and "area" after the word "less."

Mr. MANDERSON. I move to amend by making the same change in the third line.

Mr. THUMMEL. I will accept that amendment.

The CHAIRMAN. The question is on the motion of the gentleman from Hall, (Mr. Thummel) as amended. The amendment was agreed to.

Mr. KIRKPATRICK. I move to strike out all after the word "area" in the third line. The reason I do this is, I think it would be difficult to enforce such a provision as this.

Mr. WEAVER. I think, Mr. Chairman, the gentleman don't exactly comprehend this; this is where a county already established is to be divided. I would dislike to see this measure prevail, if it is so established it might leave the dividing line go right near the county seat.

Mr. SPRAGUE. I will ask the gentleman whether it does not apply to the location of the county seat in a new county, as well as counties which have been divided?

Mr. WEAVER. No, sir, I don't think this has reference to new counties at all but only to the counties to be divided, so that the line may not come near the county seat, leaving it at one side of the county.

Mr. PHILPOTT. Mr. Chairman. I move to strike out in the third line "within less" and insert "nearer" and strike out "of " in the fourth line and insert "to."

Mr. HASCALL. Mr. Chairman. This section was taken from the Illinois constitution as I discover by referring to it, and it appears to be a very good section; in the first place it prohibits reducing counties already established to a less area than 400 square miles or forming new counties with less, then the latter part of it is to prevent cutting up the counties already established, if by taking off a part the county lines should run within ten miles of the county seat of the old county. That is certainly a good provision, so that there will be no necessity of changing the county seat already established. I see no object in changing the language. I think the section is a better one than we can get by amendment.

Mr. SPEICE. Mr. Chairman. It occurs to me the amendment does not remedy this section. Take for instance a county eight miles one way and twenty-four the other, which is an area of more than four hundred miles. You cannot help the county seat being less than ten miles from the county line.

Mr. KIRKPATRICK. Mr. Chairman. I think we all understand this. County lines have often been changed in Nebraska; there used to be a Clay county near here which is now entirely obliterated, given to other counties. There are some counties with a very large area and it may be necessary to divide some of them and establish lines within ten miles of the county seat. There are geographical reasons for locating county seats.

Mr. PHILPOTT. Mr. Chairman. I withdraw my amendment, for the purpose of ascertaining whether we will support the amendment offered by the gentleman from Cass.

Mr. SPRAGUE. Mr. Chairman. There seems to be some misunderstanding in regard to what the real meaning of this section is. We should look at its action in Illinois; there could not have been any newly organized counties there, what counties were formed must have been cut from other counties, and we can arrive at an easy understanding of what they meant by this section.

The CHAIRMAN. The question is upon the amendment of the gentleman from Cass, to strike out all after the word "area."

The motion was not agreed to.

The section as amended was adopted.

The chairman read the next section, as follows:

Sec. 2. No county shall be divided, or have any part stricken therefrom without first submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county voting on the question shall vote for the same.

Mr. HASCALL. I move to strike out this section. We have some large counties in this state, and it will be necessary to reduce them in size. Lincoln county is fifty-six miles east and west at the present time, and we have counties larger, even than that. The citizens of that county will oppose a division of the county. They have good reason for that, although their county seat is in the center, because the larger their counties are east and west the more railroad they get, and consequently the more tax they get from the railroads; therefore it is desirable to get a railroad running lengthwise of the county as far as they can.

Mr. SPRAGUE. I think this is a very important and proper section, and I am opposed to striking it out. This question of allowing the legislature to cut up a county is a bad idea, and it should never be allowed except by a vote of the people. I have known it done when it could not be done by a vote of the people, against almost the entire wish of the people of the county—log rolled through the legislature for the convenience and only to satisfy a very few men. I think this just the provision we ought to have, and I hope the committee will not strike it out. It is a democratic way to decide measures referring to the people—the sovereigns themselves. If they wish it let them say so.

Mr. HASCALL. This applies to counties that are not organized as well as organized. We have seventy-five counties where the boundaries are defined; and where they are defined it is more for the fixing up of a locality than for the permanency. When Lincoln county was defined, it was expected a portion would be taken off at a proper time, when settlements adjoining would justify. If a county is unorganized you could not have themselves vote when first organizing; and it might be convenient for new settlements nearer the county line, that the new one should be formed, embracing part of the old county. Fifty-six miles square is too much for one county, and it is only allowed to remain so for the time being on account of there being so much unoccupied ground.

Mr. KENASTON. Mr. Chairman. It looks very plain to me that if there is any necessity for the removal of the county seat the people of the county will see it. If it is important that there should be a change made the majority will vote for a change. Now, sir, I think we should let the majority of the people say what they desire in this matter.

Mr. TOWLE. Mr. Chairman. I think the objections of the gentleman are these. There are now several unorganized counties in the state—

Mr. HASCALL. Mr. Chairman. I will withdraw my motion to strike out, and the gentleman can make a proviso to add to the section.

Mr. TOWLE. Then Mr. Chairman I would add a proviso to the section like this: "Provided, that the legislature may divide any county that has an area which exceeds 900 square miles without the question being submited to the people."

The CHAIRMAN. The question is upon the proviso offered by the gentleman from Richardson (Mr. Towle.)

Mr. WEAVER. Mr. Chairman. I object to the principle. What right has the legislature to take this matter out of the hands of the people, no matter whether it is a large, or a small county. I will not make a speech upon this question, but I wish to bring the matter to the notice of the committee in order that they may see it in the proper light.

Mr. BOYD. Mr. Chairman. I wish to ask the gentleman from Richardson (Mr. Towle) a question. Suppose the largest portion of the people live on the eastern side of the county. Those on the west could never get set off into a new county because the people on the eastern side, would always vote the proposition down, and they may never get as many votes as the people in the eastern part of the county and consequently they cannot be set off into another county, although it might be much more convenient to them.

Mr. WEAVER. Let us suppose the county seat is right in the center of the county and suppose the legislature should divide the county right in the center, what would you do in a case like that?

Mr. BOYD. The first section does away with that objection. You cannot divide a county so that the lines will come within less than ten miles of the county seat.

Mr. KIRKPATRICK. Mr. Chairman. Suppose there are about a thousand voters at a certain county seat away out thirty or forty miles and a number who are in the minority, say nine hundred and ninety votes. They wish to be set off in another county, so that they will not have so far to go to vote, but the thousand wish to keep them in their county for revenue purposes,etc., and as they are outnumbered in votes, they are compelled to remain. It seems to me it is very unjust.

The CHAIRMAN. The question is upon the proviso offered by the gentleman from Richardson, (Mr. Towle.)

Mr. TOWLE. Mr. Chairman. I would like to say a word in answer to the question asked by the gentleman from Richardson (Mr. Weaver.) If people have gone into a county and located their county seat about the center of the county, it would be very unjust to divide their county. I will tell the gentleman that this provision is made for special counties—counties in the far west that have been made for the purpose of including enough people to form a county in order to tax the Union Pacific railroad.

It is well known to the citizens of these counties that they will be cut up to the standard uniform size, and the people who locate the county seats do not expect anything else but that the county will be divided. Look at the county seat of Lincoln county; it is located in such a manner that when the county is divided—as it will be—the county seat will be nearly in the center of these sub-divisions. Take one of these very large counties and you will find it will be an endless dispute as to how the county should be divided, as to where the county seat should be located. My idea is, that the legislature should divide these large western counties where they are so thinly settled.

The CHAIRMAN. The question is on the proviso, by way of amendment, offered by the gentleman from Richardson (Mr. Towle.)

The committee divided and the amendment was agreed to.

The CHAIRMAN. The question is on the adoption of the section as amended.

Section two, as amended, was adopted.

The chairman read the next section, as follows:

Sec. 3. There shall be no territory stricken from any county unless a majority of the voters living thereon shall petition for such division; and no territory shall be added to any county without the consent of the majority of the voters of the county to which it is proposed to be added. But the portion so stricken off and added to another county, shall be holden for and obliged to pay its proportion of indebtedness of the county from which it has been taken.

Mr. HASCALL. Mr. Chairman, I move to insert the word "organized" before the word "county" in the first and also in the second line.

The committee divided and the amendment was agreed to.

The CHAIRMAN. The question is on the adoption of the section as amended.

Section three was adopted.

The Chairman read the next section, as follows:

Sec. 4. No county seat shall be removed until the point to which it is proposed to be removed shall be fixed in pursuance of law, and two-thirds of the voters of the county, to be ascertained in such manner as shall be provided by general law, shall have voted in favor of its removal to such point; and no person shall vote on such question who has not resided in the county six months and the election precinct ninety days next preceding such election. The question of the removal of a county seat shall not be oftener submitted than once in six years; provided, that when an attempt is made to remove a county seat to a point ten miles in a direct line nearer the center of a county, then a majority vote only shall be necessary, and the question of removal may be submitted once in four years.

Mr. TOWLE. I move to strike out the words commencing with the word "and" in the third line to and including the word "election" in the fifth line.

The amendment was agreed to.

Mr. ROBINSON. Mr. Chairman. I move to strike out the proviso.

The amendment was not agreed to.

Mr. KIRKPATRICK. I move to strike out the words "in a direct line" in the seventh line.

Mr. WEAVER. Mr. Chairman. All this means is that the measurement shall not be by angles.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Cass (Mr. Kirkpatrick.)

The amendment was not agreed to.

Mr. PRICE. Mr. Chairman. I move to strike out the word "ten" in the seventh line and insert "six or more."

Mr. SCHAFF. Mr. Chairman. I move to amend by inserting "eight" instead of six.

The amendment was not agreed to

The CHAIRMAN. The question is on the amendment of the gentleman from Jefferson (Mr. Price.)

The amendment was not agreed to.

Mr. SPRAGUE. Mr. Chairman. I move to strike out all in first line after the word "until," down to and including the word "and," in second line, also the words "to such point" in third line.

Mr. WEAVER. Mr. Chairman. My idea of the reading is this, that in submitting a question of this kind for the removal of a county seat, it will have to go through some process fixed by law.

Mr. STRICKLAND. Mr. Chairman. I think the legislature will provide by a general law how these votes shall be taken in counties with reference to the removal of county seats.

Mr. SPRAGUE. Mr. Chairman. It strikes me it is very necessary to carry out a principle we have adopted and that is to do away with special legislation. Without a special act you cannot fix any point.

Mr. ROBINSON. Mr. Chairman. I think this provision ought to be retained. You will not find one fifth of the people united on any particular point to which to remove a county seat. If this is retained a majority must first determine to what point it shall be removed.

Mr. HASCALL. Mr. Chairman. The position taken by the gentleman from Saunders (Mr. Sprague) is a good one, that we have prohibited special legislation. It seems to me it might be done in some different way; a general law might be passed providing that the county commissioners should settle the point to which it is proposed to move the county seat, then two-thirds of the voters should remove it to that point.

Mr. KIRKPATRICK. Mr. Chairman. We have had a general law for a great many years in relation to the removal of county seats. I object to the point where it is to be removed being fixed by law.

Mr. SPRAGUE. I cannot conceive but what this provision as it now remains, will require in the first place, the enactment of a law by the legislature fixing the point to which the county seat shall be removed, and if the people are satisfied with the point selected by the legislature, then it becomes the county seat. Some say that the county commissioners may fix the point upon which the people may vote, but they might fix a point which the people would not desire. I do not believe that would work well. I do not think it was the object of the committee. I believe the thing may be fixed by striking out the words I propose, in the first and second section, and then by striking out in the third line, the word "such", and add "some other one."

The CHAIRMAN. We will consider this all one section.

Mr. TOWLE. I think the amendment should prevail. I think the way the matter reads now it will be indefinite. Will you fix that point by special act of the legislature; will you allow the county commissioners to fix it; shall it be upon a vote of the people; or under the provisions of a general law? I believe, as it is indefinite at the very best, and as many constructions can be put upon the ambiguous language, it would be better to strike it out entirely. The succeeding legislature would pass a general law upon the subject, providing that the petitions should be brought to the county commissioner that there should be some point or points designated therein, and that those bounds alone should be voted for; and if none of them were within ten miles of the old county seat there could be no removal, because it would be in conflict with this constitutional provision. No parties will propose the name of any county which does not come within the scope of this constitutional provision. I believe it should be decided by the provisions of the general law.

The CHAIRMAN. The question is upon the motion of the gentleman from Saunders, (Mr. Sprague) who moves to strike out all after the word "until" in the first line, down to and including "and" in the second line; also to strike out, in the third line, the word "such," and insert "some other one."

The motion was agreed to.

The section as amended was adopted.

The chairman read the next section, as follows:

Sec. 5. In each county there shall be elected the following officers: County judge, county clerk, (who shall be ex-officio recorder of deeds) sheriff, clerk of the district court, treasurer, surveyor and coroner, each of whom shall enter upon the duties of his office respectively on the first day of January after their election, but when that day shall fall on Sunday the term of office shall commence on the following day; and they shall hold their respective offices for the term of two years, and until their succesors shall be elected and qualified.

Mr. SHAFF. I move to amend by inserting after the word "officers," in the first line, "three county commissioners."

Mr. BOYD. The second section of the report of the committee on townships provides for the election of three county commissioners in connection with a board of supervisors.

Mr. KIRKPATRICK. I think that should be adopted in connection with this report. In our county we have a board, I think, of seventeen supervisors, according to the present law, three of them are county commissioners, the county being divided into three districts with one commissioner from each.

Mr. BOYD. If we are going to provide for the appointment of three county commissioners, I shall move an amendment to the amendment of the gentleman from Richardson, to substitute section six of the Illinois constitution, for the whole section. It reads, as follows:

Sec. 6. At the first election of county judges under this constitution, there shall be elected in each of the counties in this state not under part stricken therefrom, without submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county, voting on the question, shall vote for the same.

Sec. 3. There shall be no territory stricken from any county, unless a majority of the voters living in such territory, shall petition for such division; and no territory shall be added to any.

Now Mr. Chairman, this amendment only allows of one commissioner being elected each year, and then of two commissioners who understand the business of the office when the third comes in. If the gentleman will withdraw his motion, I will make this a separate section.

Mr. HASCALL. Mr. Chairman. This relates to county officers, it does not relate to county commissioners alone.

Mr. WEAVER. Mr. Chairman. The gentleman seems to think that these commissioners will go out this year.

Mr. KIRKPATRICK. Mr. Chairman. Under our present laws, we have only one county commissioner elected each year, and I think that is a very good way. Now this proposition would make it obligatory upon the people to elect the full board at one time. I think we had better pass this section over for the present.

The CHAIRMAN. The question is upon the motion to insert, after the word "officers,", in the first line, the words "three county commissioners."

The committee divided and the amendment was not agreed to.

The CHAIRMAN. The question recurs upon the adoption of the section.

Mr. STRICKLAND. Mr. Chairman. I think we ought to retain the county commissioner system. It will save each county quite an item of expense.

Mr. STEWART. Mr. Chairman. I think the report of the committee on township organizations leaves this matter to the counties.

Mr. KIRKPATRICK. Mr. Chairman. I wish to offer an amendment to the section. I want to provide for the election of a county recorder of deeds. I would strike out the words "who shall be ex-officio recorder of deeds."

Mr. TOWLE. Mr. Chairman. I agree with the general principles of the amendment proposed by the gentleman from Cass (Mr. Kirkpatrick). I believe there should be a recorder of deeds.

The CHAIRMAN. The question is upon the proposition offered by the gentleman from Cass (Mr. Kirkpatrick.)

The section as amended will be read:

Sec. 5. In each county there shall be elected the following county officers. County judge, county clerk, recorder of deeds, sheriff, clerk of the district court, treasurer, surveyor and coroner, each of whom shall enter upon the duties of his office respectively on the first day of January after their election; but when that day shall fall on Sunday the term of office shall commence on the following day; and they shall hold their respective offices for the term of two years, and until their successors shall be elected and qualified.

Mr. KIRKPATRICK. Mr. Chairman. There is a special law applying to certain counties which makes county clerks, clerks of the district court. I think that is wrong. I know there is business enough in the counties of this state to employ a recorder of deeds and also a district court clerk. I propose to make a county clerk, a recorder of deeds, and also a clerk of the district court.

Mr. STRICKLAND. Mr. Chairman. I apprehend that in some counties this will not work well. In some counties the clerks have very little to do. If you cut off his position of recorder of deeds you leave him almost nothing to do. I can't see the object of the gentleman from Cass (Mr. Kirkpatrick) in making this amendment.

Mr. KIRKPATRICK. Mr. Chairman. We have never had a law making the county clerk ex-officio recorder of deeds. The gentleman (Mr. Strickland) and I have helped to make a good many laws in this state, but we never yet did that. Now, I think these offices should be separated. I will tell the gentleman what the county clerk has to do. He has to make out assessment papers; he is also auditor of the county, in one sense. He keeps an account of all the expenditures and receipts of the county. He makes out the tax books aside from being recorder of deeds, and I have never known a county clerk who did not have enough to do. I have never known any gentleman who was elected by the people to refuse to do this on account of the compensation he received, that is pretty good. He is county clerk and keeps the records as clerk of the district court.

Mr. SPRAGUE. We have a population in our county of 6,000 or 7,000 may be at this time, yet one man performs the duties of county clerk, recorder of deeds and clerk of the district court, and all three combined hardly supports him, and keeps him employed. Now, sir, if you should separate them he could do all the business or work in one month.

Mr. KIRKPATRICK. Don't he get a salary?

Mr. SPRAGUE. Suppose he does, we don't want to pay a man a salary unless we have work for him. I cannot see the necessity of this. If it only applied to counties where there are over 8,000 inhabitants it might do well enough.

Mr. VIFQUAIN. Mr. Chairman. I move to strike out "clerk of the district court" in the first line and make the county clerk ex-officio clerk of the district court. We have provided for a county judge and there will be but two or three counties in the state in which this work will be very hard.

Mr. KIRKPATRICK. Mr. Chairman. I rise to a point of order. The amendment of the gentleman is not an amendment to the amendment but totally destroys it.

The CHAIRMAN. I will have to entertain the gentleman's point of order. I do not believe this amendment of the gentleman from Saline (Mr. Vifquain) is in order. The question is on the amendment of the gentleman from Cass (Mr. Kirkpatrick.)

The amendment was not agreed to.

Mr. VIFQUAIN. Mr. Chairman. I renew my amendment now.

Mr. STRICKLAND. Mr. Chairman. It is impossible now in about six counties of the state for one person to perform the duties of this office. In our county for instance, there are duties that belong to this office to keep one man busy. The gentleman says he can keep clerks but then we would not have responsible persons to perform these duties. The duties are so various and so numerous that it ain't a possible thing for one man to do the work of any two of these offices. It is a very important thing to record deeds and it must be done by some person who understands his business and can do it well. For the gentleman's own county I do not know, but I am speaking for six or eight counties in the state.

Mr. VIFQUAIN. Mr. Chairman. I think in most of the counties the county clerk could do all the work.

Mr. HASCALL. Mr. Chairman. If in such counties as the gentleman speaks of, if they desire to have the same person discharge the duties of these officers, they can elect them to these various positions. In larger counties it is impossible to combine them together.

Mr. TOWLE. Mr. Chairman. I find that in three-fourth of the constitutions of the United States there is no such provision as this section. My proposition is to strike this section out entirely and leave it to the wisdom of the legislature, for them to determine what class of counties shall have certain officers and what shall not. It is absolutely necessary in two or three counties that there should be a clerk of the district court, recorder of deeds, and county clerk, in other counties it is only necessary that there should be a recorder of deeds and county clerk, who shall be ex-officio clerk of the district court; and other counties where one clerk can manage all. I think it should be left to the legislature, therefore I move that the whole section be stricken out.

Mr. ROBINSON. Mr. Chairman. It would be impossible to fix this section in regard to the duties of county clerk so as to suit any ten men of this convention. In the county of Douglas the recorder of deeds derives a large amount and ought to have a salary and pay the balance in to the county treasury. It seems to me we should leave the whole matter to the legislature.

The motion was agreed to.

Mr. MANDERSON. Mr. Chairman. I move to insert a new section here. "The legislature shall provide for the election of such county and township officers as may be necessary."

The section was agreed to.

The secretary read the next section, as follows:

Sec. 6. The treasurer shall be ineligible for said office for two years next after the end of the term for which he was elected; and present county treasurers and county clerks shall be ineligible for said offices at the first election under this constitution.

Mr. STRICKLAND. Mr. Chairman. I move to strike out the second clause of the section.

Mr. WILSON. Mr. Chairman. I move to strike out the whole section. It is not easy to get a good treasurer in some counties, and when they get a good one they should be allowed to re-elect him if the people wished to do so. He has given sufficient security, therefore I move to strike out the section.

Mr. WEAVER. Mr. Chairman. In the executive article we have already agreed that no state treasurer shall be eligible for two years after having held office for two consecutive terms. If there be reason for that, why not have the same provision in regard to county treasurers.

The motion to strike out was agreed to.

The Chairman read section five, which was a substitute for the one having that number in the printed bill:

Sec. 5. The legislature shall have power to provide such township and county officers as may be necessary.

The section was adopted.

The chairman read the next section, as follows:

Sec 6. The treasurer shall be ineligible for said office for two years next after the end of the term for which he was elected; and present county treasurers and county clerks shall be ineligible for said offices at the first election under this constitution.

Mr. HASCALL. I move the section be stricken out.

The motion was agreed to.

The Chairman read the next section, as follows:

Sec. 7. County officers shall receive as their only compensation salaries to be fixed by law; but in all cases where fees are provided for, said compensation shall be paid only out of, and shall in no instance exceed the fees already collected. County clerks shall never be paid in excess of the following: In counties having a population of 5,000 or less,

$2,000; in counties over 5,000 and not exceeding 10,000 population, $2,500; in counties over 10,000 and not exceeding 15,000 population, $3,000; in counties over 15,000 and not exceeding 25,000 population, $3,500; in counties over 25,000 and not exceeding 50,000 population, $4,000; and for every 50,000 additional population, $500; and the treasurer and clerk of the district court shall never be paid in excess of the following: In counties having a population of 5,000 or less, $1,500; in counties over 5,000 and not exceeding 10,000 population, $2,000; in counties over 10,000 and not exceeding 15,000 population, $2,500; in counties over 15,000 and not exceeding 25,000 population, $3,000; in counties over 25,000 and not exceeding 50,000 population, $3,500; and for every 50,000 additional population, $500.

Mr. WEAVER. Part of this section is not in accordance with my views, and therefore I propose to strike out all after the word "collected," in the third line.

Mr TOWLE. I move to amend by striking out the whole section.

Mr. WEAVER. The first part of the section is complete in itself, and there is no reason why it should be stricken out, unless this committee think that county officers should not receive salaries but fees. This means that if fees were provided for the county treasurer or clerks, if they exceed the salary fixed by law, say a salary is $2,000 and the fees amount to $3,000, then the $1,000 should be placed in the county treasury.

Mr. ROBINSON. I hope this section will not be stricken out, and I also hope there will be a provision here that county clerks and all these officers shall receive their pay from the fees collected; but that the amount which goes into their hands shall never exceed a certain sum. It would be well enough for us to adopt the system of the United States in regard to local land officers. If the fees of the office exceed $3,000 it goes to the United States; if it does not exceed that, the officer must pocket the fees and rest satisfied. Where the business of the office requires two men instead of one, the two do more than twice as much as the one, and in that instance it gives too much to them. I think it should be fixed at a reasonable limit, and when it exceeds that the balance should be accounted for by them to the county treasurer. If they receive a fair salary, and I am willing to place it as high as $3,500 then let the balance be placed in the treasury.

Mr. TOWLE. Mr. Chairman. What is the use? Upon what principle is it based—a state constitution giving the power to the legislature to propose certain measures; the constitution having no right to fix the thing? There is no use in giving the legislature a power which it already has inherently. It seems to me this thing should be left entirely to the discretion of the legislature.

Mr. WEAVER. Just one word. Mr. Chairman, and I have done with this. The gentleman from Richardson does not exactly comprehend this. It makes a provision positive. It says they shall receive salaries. The legislature can fix fees for their offices and they may swell from $3,000 to $5,000, but if we say they shall receive reasonable salaries—that is all in excess of these salaries shall go into the county treasury, and this will enrich nine-tenths of the counties of this state. The officers in Richardson county make from $3,000 to $5,000, and if the clerk had been paid a reasonable salary, the balance, probably $1,500 would have been saved to the county.

Mr. HASCALL. Without this section the whole subject matter is left with the legislature and if they determine the fees are too high they may reduce them; and if, hereafter, it is demonstrated that the officers cannot perform their duties for the fees provided by law, they will increase them, and they also have power if they see fit, to say by act, that if the fees exceed a certain sum, the balance shall be put into the county treasury.

Mr. KIRKPATRICK. I think the objection of the gentleman from Richardson is that it ought not to go into the constitution. Now, I think he is mistaken. It is the duty of a constitution to prohibit. I think a constitutional convention has full right to do that.

Mr. BOYD. Mr. Chairman. I think we either ought to strike out the whole section and leave the matter to the legislature, or leave the entire section in. Of course small counties, sparsely settled, do not have as much business to be transacted as the larger counties. I would be in favor of retaining the whole section, and adding "all fees——"

The CHAIRMAN. The amendment is not in order. The question is upon the motion to strike out section seven altogether.

The committee divided, and the motion to strike out section seven was agreed to.

The CHAIRMAN. The whole article having been gone through with, is now before the committee.

Mr. KENASTON. Mr. Chairman. I move that the committee now rise, and report back the bill to the convention with a request that the body concur in the amendments made.

The motion was agreed to.

The CHAIRMAN. The committee of the whole have had under consideration the report of the committee on counties, and have directed me to report the bill back to the convention, and request the convention to concur in the amendments made thereto.

Adjournment.

Mr. MANDERSON. Mr. President. I move that we adjourn until tomorrow morning at 8 o'clock.

Mr. HASCALL. Mr. President. I hope the gentleman will wait a moment. I think this article should be disposed of. I think it will take but a few minutes.

Mr. MANDERSON. I withdraw my motion, Mr. President.

Motions.

Mr. STEVENSON. Mr. President. I move we take up the report of the committee on military affairs.

Mr. KENASTON. Mr. President. I amend by moving that we take up *this report of the committee on counties* in convention.

Mr. HASCALL. I would say that the report will have to be copied in order to get at it properly.

Mr. WEAVER. Mr. President. Our minds are all fresh upon these amendments, and I think we can consider the article now.

Mr. BOYD. Mr. President. I hope this motion will not prevail. There are a good many men absent, who wish to express their opinions upon this article.

The PRESIDENT. The question is upon the motion to take up the report of the committee on counties.

The motion was not agreed to.

The PRESIDENT. The question now is upon the motion to take up the report of the committee on military affairs.

The committee divided and the motion was agreed to.

Committee of the Whole.

So the convention went into committee of the whole, Mr. Philpott in the chair, for the consideration of the report of the committee on military affairs.

ARTICLE ———

MILITIA.

Section. 1. The militia of the State of Nebraska shall consist of all able-bodied male persons resident in the state between the ages of 18 and 45, except such persons as now are or hereafter may be exempted by the laws of the United States or of this State.

Sec. 2. The legislature shall, at their first session after the adoption of this constitution, provide for the organization, equipment and discipline of the militia, and shall therein conform as nearly as practicable to the regulations for the government of the armies of the United States.

Sec. 3. Militia officers shall be chosen or appointed as follows: Captains, subalterns and non-commissioned officers shall be chosen by the written votes of the members of their respective companies. Field officers of regiments and separate battallions by the written votes of the commissioned officers of their respective regiments and separate battalions. Brigadier and major generals shall be elected by the written votes of the officers of their brigades and divisions respectively. The staff-officers will be selected by the general-in-chief, division, brigade, regimental, batallion and company commanders respectively for their different commands; provided,that in time of war such right of election shall be suspended and all commissioned officers shall be appointed by the governor, and non-commissioned officers by the regimental commander on the recomendation of their respective company commanders.

Sec. 4. All militia officers shall be commissioned by the governor and may hold their commissions for such a time as the legislature may provide.

Sec. 5. The military records, banners and relics of the state shall be preserved as an enduring memorial of the patriotism and valor of Nebraska, and it shall be the duty of the legislature to provide by law for the safe keeping of the same.

Sec. 6. The office of adjutant general of the state of Nebraska is hereby created and he shall be elected in the same manner and at the same time that other state officers. His salary and his duties shall be prescribed by law at the first session of the legislature after the ratification of this constitution.

Sec 7. No person or persons conscientiously scrupulous of bearing arms shall be compelled to do militia duty in time of peace, provided such person or persons shall pay an equivalent for such exemption as may be determined by law.

The chairman read the first section, as follows:

> Section. 1. The militia of the State of Nebraska shall consist of all able-bodied male persons resident in the state between the ages of 18 and 45, except such persons as now are or hereafter may be exempted by the laws of the United States or of this state.

Mr. HASCALL. Mr. Chairman. I offer a substitute for the whole article. It is taken from the report of the legislative committee and reads as follows:

> The legislature shall determine what persons shall constitute the militia of the state and may provide by law for organizing and disciplining the same.

The CHAIRMAN. The question is upon the substitute suggested by the gentleman from Douglas (Mr. Hascall.)

Mr. KIRKPATRICK. Mr. Chairman. I am opposed to the substitute offered by the gentleman from Douglas. I think some of these sectoins ought to be retained in our constitution. Now, section 4, I think should not be stricken out. It reads:

> Sec. 4. All militia officers shall be commissioned by the governor and may hold their commissions for such time as the legislature may provide.

Now I think that is a proper provision. The next section I think I am opposed to. I think there are two sections at least that ought to be retained. I hope the article will not be stricken out.

The CHAIRMAN. The question is upon the substitute offered by the gentleman from Douglas.

Mr. KIRKPATRICK. Mr. Chairman. Before that motion is put, I will make an amendment. I would like to amend so as to retain sections 4 and 5, and I am willing to strike out the balance of the article. There is a reason why this section should be adopted that he shall have the power to commission. And then, sir, I think there is some reason to retain section five (5) and seven (7).

Mr. HASCALL. I have no objections to sections four and five.

Mr. MANDERSON. Mr. Chairman. I move to amend by adding sections one, two, three, and six, the rest of the article.

Mr. Chairman. I rise to make merely this suggestion that it seems to me that it is a little discourteous to the standing committee of this convention that after reading their report a substitute should be offered for this whole article. I think it is due to the committee and especially to its able chairman that we should take this up section by section and consider it as we have in other cases.

Mr. HASCALL. Mr. Chairman. I did not make the motion to do away with the reading. I inquire is it more discourteous to suggest a substitute for the whole article than to go over it section by section and strike it out? I proposed that substitute for the purpose of saving time. If the convention wants the report of course they will vote against the substitute.

Mr. ROBINSON. I seconded the motion for this substitute because I am in favor of it, but in so doing I did not intend any discourtesy to the committee or its chairman. I am willing to entrust it in the hands of the chairman of the committee for I believe there is not a person here more able to prepare an article on this point than is he; but sir, I don't think it is necessary to go into details. We do not know what we need now. The views may be good in the report but I do not think it is wise to adopt them.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Douglas (Mr. Manderson.)

The amendment was not agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Cass (Mr. Kirkpatrick.)

The committee divided and the amendment was not agreed to.

Mr. PRICE. Mr. Chairman. I move the adoption of the substitute.

The committee divided and the motion was agreed to.

Mr. HASCALL. Mr. Chairman. I move the committee rise, report its action to the convention and recommend the adoption of the substitute.

The motion was agreed to.

Mr. PHILPOTT. Mr. President. The committee of the whole have had under consideration the report of the committee on military affairs, have adopted a substitute for the whole bill and recommend its adoption by the convention.

Adjournment.

Mr. TOWLE. Mr. President. I move we adjourn until eight o'clock this evening.

Mr. MANDERSON. Mr. President. I move we adjourn.

The motion was agreed to.

So the convention at five o'clock and thirty-five minutes adjourned.

THIRTY-EIGHTH DAY.

Tuesday, August 8, 1871.

The convention met at 8 o'clock a. m., and was called to order by the president.

Prayer.

Prayer was offered by the chaplain to the convention, L. B. Fifield, as follows:

> Great and good Father, wilt thou give us this day of thy blessings. Teach us the use of life. Deliver us from evil and forgive our sins for Christ's sake. Amen.

Reading of the Journal.

The journal of the last day's proceedings was read and approved.

Leave of Absence.

Mr. THUMMEL. Mr. President. I ask leave of absence for Mr. Abbott for the day.

Leave granted NEM CON.

Mr. CAMPBELL. Mr. President. Mr. McCann sent me word yesterday that his daughter was not expected to live, and he desired me to ask indefinite leave of absence for him.

Leave granted NEM CON.

Petitions and Memorials.

Mr. KIRKPATRICK. Mr. President. I have a petition and memorial which I desire to present, and beg leave to read it. (Leave.) It is as follows:

> To the Honorable, the Constitutional Convention at Lincoln assembled:
>
> Your petitioners respectfully represent:
>
> That they regard the sale of intoxicating liquors in the state of Nebraska as an evil in itself which is

pernicious, notwithstanding license laws, the best that human wisdom can devise, and is still unmitigated: which impoverishes the state; which blights educational, social and moral progress; which fosters crime, corrupts the body politic, and is the source of untold misery.

And they further represent that, in their opinion, the fundamental law of a state ought not to ignore this, but should declare the will of the people in this regard as in others of equal importance.

Therefore, your petitioners pray, that your honorable body submit an article to be an article of the constitution of this state when adopted, prohibiting the licensing or sale, or legislation authorizing it, of intoxicating liquors in the state of Nebraska, (in such manner as your great wisdom deems best it should be done,) and the result of this and your other great labors your petitioners will entrust to the integrity of the people and the direction of providence.

And your petitioners will ever pray, etc.

(Signed) S. B. HOBSON and 140 others.

I move that this be read by title and referred to the select committee of which Mr. Philpott is chairman.

The PRESIDENT. It will be so read and referred if there is no objection—so referred.

Counties.

Mr. WEAVER. Mr. President, I move that we take up the article on counties in convention.

The motion was agreed to.

The secretary read the article as reported from the committee of the whole, as follows:

ARTICLE——

Section 1. No new county shall be formed or established by the legislature which will reduce the county or counties, or either of them, from which it shall be taken to a less area than four hundred square miles; nor shall any county be formed of a less area.

Sec. 2. No county shall be divided, or have any part stricken therefrom without first submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county voting on the question shall vote for the same: Provided, that the legislature may divide any county whose area exceeds 900 square miles without submitting the law to a vote of the people.

Sec. 3. There shall be no territory stricken from any organized county unless a majority of the voters living on such territory shall petition for such division; and no territory shall be added to any organized county without the consent of the majority of the voters of the county to which it is proposed to be added. But the portion so stricken off and added to another county, or formed in whole or in part into a new county shall be holden for and obliged to pay a proportion of the indebtedness of the county from which it has been taken.

Sec 4. No county seat shall be removed until two-thirds of the voters of the county to be ascertained in such manner as shall be provided by general law, shall have voted in favor of its removal to some other one point; the question of the removal of a county seat shall not be oftener submitted than once in six years; provided, that when an attempt is made to re-locate a county seat to a point ten miles in a direct line nearer the center of a county, then a majority vote only shall be necessary, and the question of removal may be submitted once in four years.

Sec. 5. The legislature shall provide by law for the election of such township and county officers as may be necessary.

The PRESIDENT. The secretary will read the first section.

The secretary read the first section, as follows:

Section 1. No new county shall be formed or established by the legislature which will reduce the county or counties, or either of them, from which it shall be taken to a less area than four hundred square miles; nor shall any county be formed of a less area.

Section one was adopted.

The secretary read the next section, as follows:

Sec. 2. No county shall be divided, or have any part stricken therefrom without first submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county voting on the question shall vote for the same; provided, that the legislature may divide any county whose area exceeds 900 square miles without submitting the law to a vote of the people.

Section two was adopted.

The secretary read the next section, as follows:

Sec. 3. There shall be no territory stricken from any organized county unless a majority of the voters living on such territory shall petition for such division, and no territory shall be added to any organized county without the consent of the majority of the voters of the county to which it is proposed to be added. But the portion so stricken off and added to another county, or formed in whole or in part into a new county, shall be holden for and obliged to pay its proportion of the indebtedness of the county from which it has been taken.

The section was adopted.

The secretary read the next section, as follows:

Sec. 4. No county seat shall be be removed until two-thirds of the voters of the county to be ascertained in such manner as shall be provided by general law, shall have voted in favor of its removal to some other one point. The question of the removal of a county seat shall not be oftener submitted than once in six years; provided, that when an attempt is made to re-locate a county seat to a point ten miles in a direct line nearer the center of a county, then a majority vote only shall be necessary, and the question of removal may be submitted once in four years.

Mr. HASCALL. Mr. Chairman. I move to strike out the word "ten" in seventh line and insert "six."

The motion was not agreed to.

Mr. KIRKPATRICK. Mr. Chairman. I move to strike out the words "in a direct line."

The motion was not agreed to.

Mr. GIBBS. Mr Chairman. I move to strike out all after the word "provided" in the sixth line.

Mr. KILBURN. Mr. Chairman. It seems to me there is very great propriety in retaining this proviso. I say the convention will do a very unjust thing if they strike it out.

The motion was not agreed to.

Mr. BOYD Mr. Chairman. I move to strike out the words "two-thirds" in the second line and insert "three-fifths."

The motion was not agreed to.

The PRESIDENT. The question is on the adoption of the section.

The ayes and nays were demanded.

The secretary proceeded to call the roll.

Mr. HASCALL. (When his name was called.) Mr. President. I desire to explain my vote. I dislike the provision, but sooner than have none vote "aye."

Mr. KIRKPATRICK (When his name was called.) Mr. President. I would have liked to have seen the amendments of the gentleman from Douglas (Mr. Boyd) incorporated in the section, but as we cannot have them I vote "aye."

Mr. PHILPOTT. (When his name was called.) Mr. President. I have not heretofore, on any question, asked to be excused from voting, but I now ask to be excused from voting on the adoption of the section under consideration, for the following reasons__The county of Seward is in the senatorial district which I represent. Great difficulties have been experienced there relative to the location of the county seat of that county—I have acted as the attorney for the party who has succeeded in holding the county seat from the center of the county. For me to vote in favor of section 4 would be voting in favor of the party whom I have represented as attorney and thereby I would not represent that portion of my constituents who desire to remove the county seat nearer the center of the county. Let me take either alternative, vote either way, I cannot represent my constituents who are themselves divided. However honestly I may vote I am liable to be misrepresented and to have my motives impugned. I hope the convention in consideration of the reasons given will excuse me from voting.

THE PRESIDENT. Shall the gentleman be excused? "No," "No."

Mr. PHILPOTT I will wait till the whole roll is called.

Mr. VIFQUAIN. (When his name was called.) I am in the same fix as Mr. Philpott, but I will vote "no."

Mr. PHILPOTT. Mr. President. I rise to explain. I believe the section, in principle, in the main, is right. I vote "aye."

The result was announced—ayes, 21; nays, 10—as follows:

YEAS.

Cassell,
Curtis,
Estabrook,
Granger,
Gray,
Griggs,
Hascall,
Kenaston,
Kilburn,
Kirkpatrick,
Neligh,
Philpott,
Reynolds,
Stevenson,
Stewart,
Sprague,
Speice,
Thummel,
Towle,
Weaver,
Wilson —21.

NAYS.

Boyd,
Campbell,
Gibbs,
Lyon,
Majors,
Manderson,
Price,
Shaff,
Vifquain,
Wakeley.—10.

ABSENT OR NOT VOTING.

Abbott,
Ballard,
Eaton,
Grenell,
Hinman,
Lake,
Ley,
Mason,
Maxwell,
Moore,
Myers,
McCann,
Newsom,
Parchin,
Parker,
Robinson,
Scofield,
Thomas,
Tisdel,
Woolworth,
Mr. President.—21.

So the fourth section was adopted.

The President read the next section, as follows:

Sec. 5. The legislature shall provide by law for the election of such township and county officers as may be necessary.

The fifth section was adopted.

The PRESIDENT. The question is upon the adoption of the article.

Mr. WEAVER. I have a section I wish to offer. It is as follows:

"County treasurers shall be ineligible for said office for the two years next after the end of two consecutive terms for which they have been elected."

In offering this I would say it is the exact provision introduced and adopted in the executive article in regard to state treasurer. There is no use making any particular argument on this. You all see at a glance that if this provision applies to the state treasurer, it should also apply to a county treasurer. If there can be any reason why the state treasurer, after serving two terms, should be ineligible, there is just as much reason to apply it to county treasurers. There is as much skullduggery in the one as the other.

Mr. STEVENSON. I should like to know who is sure that the treasurers of counties are to be elected for two years?

Mr. WEAVER. They are fixed at that.

Mr. STEVENSON. I think we should leave this to the legislature, and if they think it right to let a man hold for two consecutive terms, they will prohibit him from holding a third one, if they desire. There is considerable difference between the amount of money handled by a state and a county treasurer. There is not much, the way the law is, for the county treasurer to cut up with and to exercise skull-duggery as the gentleman has said.

Mr. GRIGGS. It seems to me this should be left in the hands of the people, and if they do not want him they will not keep him. I never knew a man to become popular by being a treasurer.

Mr. KIRKPATRICK. I see no reason why we should incorporate such a provision in the constitution. Treasurers ought to be expected to account for all monies in their hands. In the history of my own county we have had one treasurer for over eight years. He has been four times elected. He was always elected by a large majority and he served eight years, until the last election when he was not a candidate. I do not see any good reason why, when the people have a faithful man, they should be required to lay him on the shelf.

The yeas and nays being demanded the secretary called the roll.

The president announced the result—ayes, 13; nays, 18—as follows:

YEAS.

Boyd,
Granger,
Hascall,
Kenaston,
Kilburn,
Manderson,
Price,
Sprague,
Shaff,
Thummel,
Vifquain,
Wakeley,
Weaver.—13.

NAYS.

Curtis,
Campbell,
Cassell,
Estabrook,
Gibbs,
Gray,
Griggs,
Kirkpatrick,
Lyon,
Majors,

Neligh,
Philpott,
Reynolds,
Stevenson,
Stewart,
Speice,
Towle,
Wilson.—18.

ABSENT AND NOT VOTING.

Abbott,
Ballard,
Eaton,
Grenell,
Hinman,
Lake,
Ley,
Mason,
Maxwell,
Moore,
Myers,
McCann,
Newsom,
Parchin,
Parker,
Robinson,
Scofield,
Thomas,
Tisdel,
Woolworth,
Mr. President.—21.

Mr. VIFQUAIN. Mr. President. I believe there is a mistake in Sec. 1, I want it read again. The vote was taken yesterday but it did not carry.

Mr. KIRKPATRICK. Mr. President. That was stricken out.

Mr. KIRKPATRICK. Mr. President. I now move that this convention take up the military report and act upon it.

The PRESIDENT. The question is upon taking up the military report.

The motion was agreed to.

The secretary read the first section, as follows:

Section. 1. The militia of the state of Nebraska shall consist of all able-bodied male persons resident in the state between the ages of 18 and 45, except such persons as now are or hereafter may be exempted by the laws of the United States or of this state.

Mr. KIRKPATRICK. Mr. President. I hope the convention will not take it up, as I have a substitute for this entire report. I will in about two minutes show my reasons.

I want to retain certain sections of this report of the military committee. I think it would be well to retain the first section; but I think it is important to retain section fourth and fifth, also section seventh, but I think it ought to be amended. I think the legislature ought not to have any power to coerce men to ordinary military duty in times of peace. I think that the legislature should not override the people. I think it ought to be in our constitution. I think we ought to retain sections 4, 5 and also the first clause of section 7.

Mr. VIFQUAIN. Mr. President. The committee on military affairs reported a bill for which they are responsible. We understand it to be our duty to present a good bill and we did, the statement of Mr. Hascall to the contrary notwithstanding. I voted nay on the adoption of the substitute but I bowed in submission to the will of the committee.

Mr. HASCALL. Mr. President. I have nothing to say in reply to what the gentleman (Mr. Vifquain) said. I have no doubt, but what it is as good a bill as could be provided under the circumstances, but we need something else. In regard to this report it is unnecessary (as the committee on yesterday deemed it,) to have anything more in the constitution than what was in the legislative bill, that the legislature should determine what persons should constitute the militia and provide for organizing and disciplining the same. With reference to the presentation of the banners, etc., we have a law to the effect that they shall be kept by the secretary of state until otherwise provided by law, the legislature will undoubtedly provide from time to time for this case. And that is the reason why that we should not put any more in the constitution.

Mr. KIRKPATRICK. I wish to know if we are not made a part of the people.

Mr. HASCALL. I say in regard to that, I presume the legislature will take into consideration the rights of the Quakers when they provide for organizing the militia. If we have any Quakers, or any people who are conscientiously opposed to bearing arms provision will be made to suit their case.

Mr. HASCALL. Where a subject could be left with more propriety to the legislature that they invariably adopted the rule to leave it to the legislature.

Mr. VIFQUAIN. Mr. Chairman. I have nothing against the gentleman from Douglas (Mr. Hascall,) nor am I excited but I want him to be responsible for this report and not the committee. I say you will never have a good militia under this section.

Mr. KIRKPATRICK. Mr. President. No doubt the legislature is competent to make the militia regulations but I believe the constitution should provide at least a foundation for the legislature to work upon.

Mr. MANDERSON. Mr. President. I did not feel as a member of the military committee any particular pride in this report. It I think is one that has received a good deal of thought from the able chairman of that committee and I think it will be a safe plank in the constitution. It is said by the gentleman that it is safe to leave this in the hands of the legislature. If this be true why not leave other matters of less importance to the legislature? Why not leave the details of the legislative article to the legislature? That refers merely to the political interests of the state while the organization of the militia force to repel invasion of the Indians aims at the life of the people of the state. It seems to me that we should have such a constitutional provision as has been reported by the committee as a guide for the legislature. The state of Ohio under such a provision as this early in the war of '61 was able to send seventeen (17) regiments of her militia into the field where they did important work as Ohio militia. The state of New York did the same. I think this convention should weigh the report of this committee before they cast it to the winds.

Mr. HASCALL. Mr. President. This is a time of peace and we have no need of this corn-stalk militia. The state of New York had such a provision but they found it would not work and they adopted the independent company system.

Mr. VIFQUAIN. You are mistaken as to the constitution of the state of New York. This provision was taken to a great extent from the New York constitution.

Mr. HASCALL. I am talking now of their provision before the adoption of their new constitution. I don't know what it is now. If you adopt this article persons will have to turn out every year and do a certain amount of military duty or else pay a certain fine.

The PRESIDENT. Will the gentleman from Pawnee (Mr. Stewart) take the chair.

Mr. MANDERSON. Section seven says persons compelled to do militia duty in time of peace———

Mr. ESTABROOK. What do you mean by "militia duty in time of peace?"

Mr. MANDERSON. I mean such militia duty as there is now performed in the state of Ohio under such constitutional enactment as this. The legislature has enacted that companies may be organized, but it pays none of the militia officers unless they are called out by the state. It gives only sufficient appropriation to pay the renting of the building for an armory and furnishes them with arms when it is necessary, and the general government is at all times ready and willing to hand out these arms on the proper call of governors of states for the purpose of arming these frontier companies. In the drill and discipline of these companies lie the safety of the states and the republic. How is this two hundred dollars made up? From those gentlemen who do not propose to do military service in time of peace or war, they are required to pay a dollar or so per year, and that goes to the support of these military companies. I think officers should all be appointed and be promoted for meritorious services, experience proves that this is the proper course to pursue. Let troops in the field be permitted to elect their own officers, and you convert captains and lieutenants into office seekers, men who will corrupt discipline for the sake of obtaining high rank, therefore I think that the right to elect in time of war **should be suspended.** It gives a system of rewards that actuate men to deeds of daring in times of war. It seems to me a careful consideration of this article will satisfy the members of this convention that it should be engrafted in our organic law.

Mr. STRICKLAND. Mr. President. If there is any possible objection to this bill it is in the second section. I have looked over this report half a dozen times and do not see one thing that can be objectionable excepting in that section, aside from that, I challenge any single member on the floor to show where there is a single clause but what ought to be in the law of the state.

Mr. HASCALL. (to Mr. Strickland.) I can point out one, the creating of the office of adjutant general.

Mr. STRICKLAND. I will reply to that. This state is supposed to have a population of 150,000 and will probably have millions during the existence of this constitution. It is true the adjutant's duties in time of peace are very light, but the old adage "in time of peace prepare for war" is yet true. We have seen a difficulty in the Pawnee war which occupied the legislature eight days wrangling over the question of pay to the people of Omaha and other places who supplied the militia with commissary. The people of the country that are liable to do military duty ought to be enumerated and be known; every state ought to know what its forces are. I can remember when a boy receiving sixty cents a day to train the New York militia; that was a farce which was abolished. It is true that when the war broke out New York and Ohio did great service; in the two states there were twenty-three volunteer regiments, and every single one immortalized themselves, and it was a great help to the country that they had such a system Supposing there is an outbreak in this state who will the governor call upon? He is commander in chief of the militia, who will he call upon, the swell mob? Why it seems to me a civilized people that have been through what we have ought to provide somewhere authority whereby it could organize a force. We are not entirely free from troubles and difficulties with regard to military aid: we have seen difficulties on our borders It is useless to disguise the fact that the government of the United States, while it holds out inducements for settlers to come here, has already reduced its army so that each state has to rest solely on its own militia for the regulation of its own affairs. Not long ago a party from Cass county, 'nine or thirteen, were destroyed, which is a wonderful comment on the government of the United States, that its flag does not protect every single individual within its limits, but it is true it does not; this government ought to give protection everywhere. We have, living in Nebraska, hundreds of good citizens, whose scalps every hour are in danger, it is not so of course except upon the extreme confines of the western border. I think we ought to have militia so that if these Indian tribes should suddenly come upon us, we would have an organization to meet them. The standing army of the United States is reduced to 30,000; New York might need a brigade or division, so California or Virginia, and what would be our proportion in relation to the population? Why a company, probably not a company. I think our constitution would be imperfect if we did not provide for an organization, it is our duty to do it. I know a great many men of peace will say we will have no more war or trouble; who could tell five days before this outbreak in New York? I do not think there is a man in this convention who would have said two years before the war that this country would be involved in war; if there was such a man he was far wiser than we, for I never believed this country would be assailed by an armed soldier and yet millions came against it and made the old Union quake. Who knows but what disturbing elements will come at some opportune moment, break out, and where are our militia? Why, in our own state, we think we sleep quietly and peaceably, and that there is no danger of our being molested by the tocsin of war. But we do not know at what hour there may be a conflict of parties, nor can we tell what is the occasion or reason for one. These things double up and come on us like earthquakes, and it is seldom these mysterious upheavings of the earth occur twice in the same place.

I remember I asked for a statement from our adjutant general, I think nearly two years ago—when I was prosecuting those four Pawnee Indians for the murder of poor McMurty at Grand Island—for a list of persons killed in the state of Nebraska by Indians. What was the answer? It is estimated that sixty-three persons have been killed in this state within two years. Think of it, Mr. President! More human souls than there are in this body, killed by the savage Indians; and within civilized Nebraska; and the flag of our union, which ought to have protected the victims, floating to the breeze within sight of the places, some of them where the bloody deeds were enacted!

General Augur kindly furnished with arms a volunteer company to go to the southwestern portion of our state, and if there had been more caution exercised and provision had been made whereby the officers could have received their commissions, and the company despatched, not as a mob, but as an organized force, the people could not have complained, as they did, that many went out for the spree. So far as I know they did well; yet there was a dispute about paying them; and questions arose about their management and conduct. Now, if we had a militia law there would be none of this. If government would see that if we could gather a company or two, a battalion, and recognize it as a proper thing; let them draw their rations and arms, and go out an armed force, with authority and power, what then? Suppose the government of the United States had a small force here—and it has been suggested by my friend General Manderson that the government has thousands and thousands of stands of arms—and they would willingly furnish this state with 20,000, if we ask for them, we would be all right.

I am in favor of retaining this whole report, except the words "may be"—somewhat of a modification of this section two. I think gentlemen say unwisely when they say that we are in peace and always will be; and that we shall never need this military force. There is not a dollar expenditure in this. And when my colleague Gen. Hascall says "what do you want with an adjutant general; where are your old banners?" I ask him where are the 3,000 guns which were bought by this state? I want to gather up these arms. I was acting adjutant under Gen. Bowen under the old militia law of the territory, and I had an inventory of all these things. This state has had not less than 35,000 or 40,000 dollars of arms, where are they? Scattered all over the state. The Germans meet in Omaha nightly and drill with these guns which belong to the state; and these are about the only arms preserved, because they have properly taken care of them in trust for the state.

Mr. HASCALL. How did they get them?

Mr. STRICKLAND. On a requisition.

Mr. HASCALL. They got them from the old adjutant general when in office.

Mr. STRICKLAND. Well, they are there and they are using them for drilling. I think we ought to engage the Germans to do our fighting and the balance of us, who have had some experience on the battle field, could stay at home(Laughter.) They are drilling, and expect I suppose to have a raid between here and Canada some of these days (Renewed laughter.) We had two pieces of artillery, as good as any in the army. Where are they? They are substantially destroyed; have been exposed to all kinds of weather, and have not been scoured out and cleaned once. We had sabers innumerable; and they are gone. Gone, I suppose, where the woodbine twineth. (Laughter.) The ammunition that remains is wet and rendered useless. There ought, I say, to be an adjutant general, with such pay as would sufficiently remunerate him, whose duty it should be to have a list of all the men liable to duty in this state; and who should be ready at the tap of the drum, or the sound of the long roll, to march forth and use their efforts to maintain the public safety. The guns ought to be stacked away somewhere, out of the reach of any but the proper officer, and the ammunition placed in an arsenal. Such an officer would then be ready in twelve hours, at the notice of the government to have an army out, with the guns and ammunition issued; and there would be an armed force ready to suppress a mob, or to act on the defensive; and if occasion should occur, to chase Indians. Why, are there to be no more wars or rumors of wars? Are there to be no more riots or street fights; no more quarrels between parties, religious or political? If so—and I am glad my friend, Mr. Hascall has struck the key-note—we had better abolish all officers. It has been said by some one that when a nation believes it is in most perfect security then is the lull before the storm which is coming on. It was so with us before our late war; and all at once the war was commenced, and brother was set against brother; father was set against son, and one half of the nation against the other half; and the whole world looking on! And by the bravery of our troops and God's blessing we came through it all, simply by a scratch. For the southerners were a good match for us. Only by a scratch! If God ever made a brave people it was that people which fought us. They were our own kindred and our own people. And although peace has been restored to the nation; our implements of warfare stacked away; and our banners hung up as mementoes of past victories and glories, yet who shall say at what uncertain hour the sound of the bugle notes, of the recall to arms, will again resound throughout the land; to punish some foreign foe in the maintenance of national honor and dignity, or which is worse, for the suppression of another internecine war?

Mr. ESTABROOK. The gentleman's speech has carried me back many years, to that time when I remember to have seen the gentleman sitting on a donkey, with one foot in a swill pail and the other in a basket, and his hat as high as the ceiling of this house, and he was an officer. It carries me back to the time when ginger bread was six bits a cake, and when boys would get twenty-five cents per day to become the substitute for some tender-footed fellow that did not want to work all day; it carries me back to the scenes that were portrayed in one of the most characteristic and lively speeches Tom Corwin ever made. You recall when General Creary made his attack, in 1840, upon the military character of General Harrison, Tom Corwin recognizing Creary as a general of militia in Michigan, drew his very vivid pictures of the assault made upon a patch of watermelons. Now, sir, history repeats itself. I have known of families, where father was once a member of the legislature of New York, and all their after life was dated from that point, and when it was necessary to refer to some event in the family it was with so long before or after "my father was in the legislature." (Laughter.) I do not exactly intend to make the action of the constitutional convention of the state the dating point of all I do; but so long as it can give me some experience, I intend to avail myself of what transpired there. I recollect that a small article was reported to the constitutional convention of Missouri in 1848. The constitution they now live under; and I do not remember that anyone made half so eloquent a speech as either of my colleagues. But when the whole matter was under discussion, and all the eloquence had been exhausted some gentleman across the way, like my friend here—so that history repeats itself exactly (Laughter) quietly got up and made a motion that the whole matter be referred to the legislature the convention quietly said "aye" to it, and so it stands. Now, according to the theory of my friend who has just spoken—because we are as though we were on a volcano—we don't know when we will hear the shout of the Indians, see the glimmer of his tomahawk or his knife. It is true there have been too many of the inhabitants of Nebraska bound and staked with their hands stretched on the back end of a wagon. But was not near here. That was near Fort Kearney or at Plum Creek or Cottonwood. Why, there was a force of the United States troops for the express purpose of protecting those men, thoroughly armed and officered and mounted on the best horses, and yet the slaughter was made. Now, I wonder to what extent could a militia, who should be required to be turned out with corn stalks and mop handles and hedge stakes and meet for drill once a year, to what extent the state would be protected? Why, here comes the experience of "when my father was a member, etc." That was in force, sir, in state of Michigan and you can talk as you will of the valor of the field of battle, etc. I have to say in regard to the whole state, that no one displayed better valor, than they, and they had no militia. Whenever there is danger, don't you know your Othellos of the American nation, that you need not to snap your finger; that when we want some one to put out a rebellion it is no corn stalk militia. It was not the corn-stalk militia, sir, that put down the rebellion. It was the raw recruits, who knew no more about "shoulder arms" than they did about "forward march;" but all they had to do was to go under such men as my friend General Strickland, and in two months time, we had a splendid army. But now says my eloquent friend, Manderson, "it don't cost a cent to carry out this provision." Let me tell my friend that gingerbread is not so cheap as it was in the old muster days. I read: "Militia officers shall be chosen as follows: Captains, subalterns and non-commissioned officers shall be chosen by the written votes of the members of their respective companies." Where chosen? There must be a meeting held somewhere to do this and there is an outlay here. It will take time to do this, and time is money.

"The legislature shall, at their first session after the adoption of this constitution, provide for the organization, equipment and discipline of the militia, and shall therein conform as nearly as practicable to the regulations for the government of the armies of the United States."

The legislature shall, it is not permissive, but the legislature shall, at their first session after the adoption of this constitution provide for the equipment and discipline of the militia. Now, sir, if you are going to be disciplined, you have got to bestow your time to it, and if you give your time, you bestow your money. Now I would not be without some means of quelling a mob, but for all ordinary emergencies, the sheriff, the constable with his posse and the marshal of the city are quite enough to quell a disturbance, but if they are not, all that is necessary to do, is to sound the alarm, and it will be as it was in Massachusetts in the beginning of the war, when regiment after regiment that had never been under arms before, marched forward to defend the capital of the nation. Don't let us introduce this burlesque. My friend from Cass, Sarpy Douglas and Washington, (Mr. Manderson) says we might as well dispense with our judiciary article, as to do away entirely with this report. The judiciary is an absolute necessity. It is something that we need for our constant use; but the militia is something we do not need in our government. To be sure, if we are to have mobs, we must have some way to quell them, but the constabulary force is sufficient. We did not need this militia before the war; we did not need it during the war; we don't need it now. These Indian wars which have been referred to have been right under the noses of the United States forces, and this fact did not prevent their occurrence. Why, sir, the fact that the soldiers were there was the incentive to these murders committed by the Indians. It exasperated them to see soldiers in this country Why is it that the United States forces are being reduced in numbers by the government? Simply because they are no longer needed. Then why should we provide for militia? There is no emergency that the legislature cannot supply. Now, I have known of a good many men being shot upon the plains, but generally they were armed. If you arm, you bid defiance, and the Indians consider it a menace The individual who walks about minding his own business is not molested, so it will be with Nebraska, if we go along and mind our own business, neither Prussia nor Russia will bring war against us, or if they do, we can protect ourselves, I am sure. I remember that in the Wisconsin constitutional convention this thing was gone through with the same as here. A good deal of discussion took place, when Warren Chase, who sat about opposite me, as my friend, who offers this substitute now does (Mr. Hascall.) (You see history repeats itself,) quietly arose and offered a substitute for the article similar to that offered by my colleague, which left the matter in the hands of the legislature. The substitute was adopted and that is the way in which the matter was disposed of. Now gentlemen, let us dispose of the matter in the same way. So that we may have no "onslaught on a melon patch" by our militia. I don't object to the watermelon, but let us not go in an organized force. (Laughter.)

Mr. PRICE. Mr. President. I object to this organization of the militia. I don't think it is necessary that time should be occupied with drilling and mustering. There are many persons who have spent a large portion of their time in the service of the United States in putting down the rebellion, and they don't want to turn out and drill now. I believe if this article is incorporated in the constitution, it will cause many votes to be cast against it. I think that the provision that there shall be a militia is well enough—I believe it is necessary, but I believe the provisions proposed by the gentleman from Douglas (Mr. Hascall) is sufficient.

Mr. PHILPOTT. Mr. President. I have been listening with considerable interest to this discussion. I don't see, for my part, why we should reverse the old adage "in time of peace, prepare for war." Now I have no doubt that if a foreign or internal foe should bring war against us, people would respond as they did to put down the rebellion; but why is it that our rebellion was not put down in ninety days, as it should have been? Because our militia was not ready to go into the field, hence we had to occupy the first 90 days in organizing. Suppose the rebellion had been put down in ninety days how many lives and how much money would have been saved. I believe it is the duty of the state to have at least the basis for an organization. I believe it is our duty to incorporate something like this report in our constitution, by which we will have a system. I don't believe that it is the object of this bill to provide for this "corn-stalk militia;" to which reference has been made. It is intended rather to put into the constitution a system of organization leaving it to the legislature of the state to provide in what manner a service shall be performed by the citizen. Now, I have looked over this article and I was struck with the sententious manner in which it was gotten up. There is the "future posterity" of our state —some gentleman has asked me whether I had any "future posterity." I will answer I have not but expect to have in the future.

Mr. MANDERSON. Will the gentleman permit me to ask him what he sees in the woman of the future?

Mr. PHILPOTT. I don't know, sir, it may be war or it may be peace. (Laughter.) I will quote from the gentleman's own words "that we should be prepared when an attack is made upon us to" welcome them with hospitable hands to bloody graves." (Laughter.) Well, it was something like that.

Mr. CAMPBELL. Mr. President. The experience we have had in this militia system which has been in vogue in the United States ever since we were boys proves that it is a failure. In all these militia drills the men really learn nothing. Now, I am in favor of introducing something like the militia drill in all our schools. To be sure we generally have women as teachers, but I don't see why they may not learn military duty as well as the men, as long as it is agitated and reagitated by some that they should become like men in every respect except in propagating the human species. Let this be the daily exercise of the children and they will take it up very quickly and will never forget it. But it is hard to learn an old dog new tricks. I am one of the board of education in Nebraska City and I thought we would give the children a little recreation. We assembled the children and formed them into companies under captainship of their teachers who were all women with one exception only, and marched them up and down the street. It was one of the grandest spectacle ever exhibited in the city.

Mr. VIFQUAIN. Mr. President. For reply to the challenge of the gentleman from Douglas (Mr. Hascall) about Sec. 6, and the necessity of an adjutant general. I will tell him this, that I honestly believe, that if we have had such expensive militia bills heretofore it was because there was no "militia act," and that the adjutant general was an appointee instead of an elected officer. Leave the legislature to play ball with the adjutant or with the militia law, and we shall remain just exactly as heretofore—It is important for the organization of the militia to have an adjutant, and whenever the organization is completed, then maybe you will be able to do without him. And as to the remarks of the gentleman from Douglas (Mr. Estabrook) I will remark, that it was thanks to a few, who had experience in volunteer companies that camps were in two weeks, ready to take the field against our country's foe, and furthermore, I will say that in case of Indian trouble, the militia of the state, will fight when the regulars would not care. And, Mr. Chairman, If we had had a regiment of militia organized, these outrages on the plains would never have taken place; and if they had taken place, we should at least have had the satisfaction of revenge. The people in the west are desirous to be prepared for any emergency against Indians;

all that they want is organization and equipment. As to drill, I admit that we may trust our citizens—but let us be prepared for any emergency! There is no state in the union that is in more need of a good militia than ours, and as to General Watermelon, I am not surprised that he opposes military affairs; his gallantry in the patch has been fully displayed (be it to patch up or patch in.) And Gen. Watermelon will admit with me that if our people refused to pay their taxes, and respect the law on the subject, that we might be obliged to force them to do so.

Mr. TOWLE. Mr. President. To test the feeling of the convention I will move that the section as it now stands and section one of the report of the committee on military affairs be re-committed.

The convention divided and the motion was not agreed to.

Mr. SPEICE. I move the adoption of the substitute.

The substitute was adopted.

Mr. HASCALL. I move that the article be engrossed for the third reading.

The motion was agreed to.

The article was read a second and third time by its title and ordered engrossed.

Mr. WEAVER. I move we go into committee of the whole on township and precinct organization.

The motion was agreed to.

So the convention went into committee of the whole, the gentleman from Saunders (Mr. Sprague) in the chair.

The CHAIRMAN. We have referred to us the report of the committee on township and precinct organization.

The secretary read the first section, as follows:

Section. 1. The legislature, at its next general session, shall provide by general law for township organization, under which any county may organize whenever a majority of the legal voters of such county voting at any general election shall so determine; and whenever any county shall adopt township organization, so much of this constitution as provides for the management of the fiscal concerns of the said county by the board of county commissioners, may be dispensed with, and the affairs of said county may be transacted in such manner as the legislature may provide; and in any county that shall adopt township organization the question of continuing the same may be submitted to a vote of the electors of said county at a general election, in a manner that shall hereafter be provided by the legislature; and if a majority of all the votes cast upon that question shall be against township organization, then such organization shall cease in said county, and all laws in force in relation to counties not having township organization, shall immediately take effect and be in force in such county. No two townships shall have the same name, and the day of holding the annual township meeting shall be uniform throughout the state.

Mr. HASCALL. Mr. Chairman. I move to insert the word "such" in place of "said" in the eighth line.

The motion was agreed to.

Mr. CAMPBELL. Mr. Chairman. I move to strike out the whole section.

Mr. BOYD. Mr. Chairman. In adopting section five of the article on counties we covered this whole ground. It provides that the legislature shall pass laws for organizing counties. I am in favor of the motion.

Mr. GRIGGS. Mr. Chairman. This section reaches further than the one referred to by the gentleman from Douglas (Mr. Boyd.) I am satisfied that a large majority of the people of the state are in favor of township organization, that is the principle I am in favor of. In Illinois out of 102 counties, 70 have township organization, their constitution of 1848 was very similar to the one the committee have reported in favor of, and Mr. Vanderventer from the twenty-fifth representative district in his remarks said "'That there was no county in the whole state that had ever selected any other way, ever changed their form of government to township organization but had let it remain that way, and that it was very popular there." In his district he was opposed to it and stumped the county against it and out of 1800 votes there was 1000 or 1200 votes in favor of the organization. I know that is the sentiment of the people in the district I represent, and I am in favor of the section. I think it is time we were rid of the county commissioner system. I wish in our fundamental laws to have the hands of the legislature tied up so that the people if they want township organizations shall have them. I do not think the section the gentleman refers to conflicts with this at all.

Mr. CAMPBELL. Mr. Chairman. I was in hopes when the gentleman from Gage (Mr. Griggs) was up he would explain the workings of this township organization. I do not know a great deal about it, but as far as my inclination goes I would prefer the county commissioner system. He says in Illinois seventy counties have that system, probably in two years from now they may change back to the old system. I know that they tried it in Iowa and got tired of it, and again adopted the county commissioner system; they must have had some reason for so doing. If I understand this township organization, it is for each county to levy its own taxes for building bridges and improving roads, some portions of some counties are very much broken and need a great deal of work in the way of bridges, other portions of the county are smooth, no streams passing through that need bridging, consequently the whole burden is thrown on the townships where these streams run; bridges are built not only for their own benefit, but for the whole county; is it not fair that the whole county should be taxed for those bridges? The different townships have their assessors, one portion of the county will assess very low, another high, there will be no uniformity in the assessment and some portions will suffer, I am opposed to the system.

Mr. GRIGGS. Mr. Chairman. The gentleman from Otoe (Mr. Campbell) says he does not know the workings of this township organization. It would only be necessary for him to read a portion of the debate in the Illinois convention to have a thorough knowledge of the workings.

Mr. Vandeventer asks this question. "Does any one know where a county that once adopting, has voted down the township organization?" The answer is, "not a county." With that I am not acquainted. I do not remember to have read that provision. But I must say in reference to the working of township organization, it gives every part of a county to be represented a voice in saying what are the different portions of the county. We all know that whereas we have three county commissioners, they are elected—one from the north, one from the south and another from the central portion of the county. In our county there is continual grumbling, that the commissioners do not know what bridges it is necessary to build, and what the different parts of the county demand. It is a poor deal as it is with the member of the city council who always gets the streets in front of his house taken care of.. But without taking the county commissioner system I take it that the report of the committee is just. It simply says they may have that kind of government if they wish it. If there is any county which wants the precinct form of government it can have it. But in counties, where every part of the county wants to be represented, I say it is not right we should say to them that they should adopt this *precinct form of* government, when at the same time. they wish to adopt township organization.

Mr. MANDERSON. Will the gentleman inform me whether it is proposed, when these townships shall be organized by any county, to do away with the board of county commissioners if necessary?

Mr. GRIGGS. That will be left to the legislature. I would state that the intention of the committee was that in every election, the first election in every county, there should be elected three commissioners to attend to the county business, as they now do. But after that time, that they may vote to change their former government and that the legislature may do away with the commissioners, and they may have another kind of government. It is left entirely in the hands of the legislature; and then the people by a vote, can adopt one system or the other. This is precisely the Illinois provision.

Mr. MANDERSON. Mr. Chairman. I wish to take up the time of the convention but a very short time. While I am in favor of township organizations where counties are sufficiently populated to make it advisable, and rather like this option to counties to adopt or refuse this organization as reported by the committee, yet I do not like one feature of this report. I think we should retain the board of county commissioners; that it should not be optional with the legislature to do away with that board. I rather like the system that obtains in Ohio. The extent of this constitutional enactment on this subject is what we adopted here yesterday when on the subject of counties. In Ohio they retain the board of county commissioners. Each county is divided into townships, each township to be as near as possible six miles square. There are appointed township trustees—two or three—I think, they get a small per diem; next a supervisor of roads, and a board of township trustees have charge of the funds of the county. They do not collect any taxes. The tax of the entire county is collected under the supervision of the county commissioners, by the county treasurer and auditor. The part thus belonging to the township for road purposes is paid over to the township trustees, and under their direction. Thus trustees have also the laying out and repairing of roads —roads commencing and terminating in the borders of their township. But if they establish a road to run through one or more townships, then the board of county commissioners have charge of the establishment and locating of that road. It seems to me it would be ill advised for us to do away with the county commissioners or let the legislature. For instance, a part of their duties will be the care, erection and control of the county court houses, the care of county property. If this board was done away with on whom would this rest? Would you do away with your trustees? I think that would be ill advised; and while I am in favor of township organization, yet I think it is safe to entrust this matter very largely to the legislature.

Mr. GRIGGS. I would ask the gentleman whether or not the section as submitted by the committee does not leave it in the hands of the legislature to provide for the various systems he has spoken of?

Mr. MANDERSON. Perhaps it does, but it gives them the option to abolish. I would not leave it in the hands of the legislature to do away with the county commissioners, and I would retain the section two, which provides for such board.

Mr. GRAY. It seems to me there is no trouble about this. For instance, when a given county, say Douglas, should adopt the township system, the presumption is that the legislature will make ample provision by general law as how that system shall operate. It seems to me it would be utterly impossible for any county in the state to get along without a county board of some sort; and the legislature will surely provide for what is necessary. They would provide as a matter of course that some officer of the township, say the clerks, should be the county board and should transact the affairs of the county the same as the county commissioners now do. It appears to me that would follow as a natural consequence. There will be no other way by which we can get along with county affairs.

Mr. MANDERSON. The difficulty I see is that it would cause the stream to rise higher than its source. If he would select township clerks to make a county board he would make the clerks a body superior to the township trustees.

Mr. GRIGGS. I meant if the township clerk was made the highest officer.

Mr. MANDERSON. The objectionable feature to my mind is these words "wherever any county shall adopt township organization, so much of this constitution as provides for the management of the fiscal concerns of the said county, by the board of county commissioners, may be dispensed with, and the affairs of said county may be transacted as in such manner as the legislature may provide."

Mr. MAJORS I just wish to make a remark or two. At the time the township board was organized in the state of Iowa I was a citizen. They provided for a supervisor from every township, which was virtually making a commissioner from every township, who was charged with the business of the county commissioner. This additional officer was elected and constituted one part of the county board for the transaction of the county business.

Mr. PRICE. I know that the majority of the people that I have the honor to represent have wished to adopt the township system of county government. They have spoken to me frequently on that subject. I too have had experience in precinct organizations and much prefer that of township organization. Gentlemen have said they would not do away with the county commissioners but have given us no reason why it should not be done. We know that if we elected a board of supervisors from each organized township, not necessarily that the township should be composed of each 36 sections but each township if it contains officials to the number of 36. Whilst under the plan of township organization you have a representative in a county board from each part of your county and the peculiar wants of each locality are represented by a person interested in that locality. I have had ten years experience in one of these counties in Iowa, in which they had township organization and I know that the citizens wish they had that system of county government to day, but because the constitution of the state of Iowa allows the legislature to change it they are deprived of that which they want. In the article we have before us, we give to the people in the county, the right to say which system they will have; if they prefer the commissioner system, we give it to them on the vote of the majority of the voters in the county, or, if they prefer the supervisor system, we give them that. By this system of township organization, each township has an individual sitting on the board of equalization, and if there is any wrong done a township it has power to secure its rights. Again, it is provided that if there are any local wants, in the shape of bridges for instance, the people are represented by a member from their immediate locality. I am satisfied that the majority of the people in the four counties which I represent will adopt the board of supervisor system, instead of that of the county commissioners. Suppose it was proposed to have a county on the question of giving bonds; the wishes of the people in that regard can be more easily ascertained by a board of supervisors, than by three commissioners. If a majority of the board do not think it should be voted upon, why they have power to reject the proposition. I believe, Mr. Chairman that the provisions of the article are right and just. I see the necessity of having it incorporated in the fundamental law of the state of Nebraska, believing it will give more general satisfaction than to say it shall be all county commissioners, or all township organization.

Mr. HASCALL. Mr. Chairman. There can be no serious objection to this article. It is true that the section we adopted yesterday in the article on counties will cover the whole case; but there is a mistake with regard to the true character of this section and that is this; if a county adopts the board of supervisor system, the county business cannot be done by a board of county commissioners. There may be two systems of county government throughout the state, but when we come to consider that this is merely a local matter, and that it does not affect the state, I see no objection to the proposition. I think we should make some provision that counties may adopt the county commissioner system if they choose. The section in the Illinois constitution reads something like this.

"At the first election of officers under this constitution there shall be elected in each of the counties in this state three officers who shall be styled, "The board of county commissioners," who shall hold sessions for the transaction of county business as shall be provided by law. One of said commissioners shall hold his office for one year, one for two years, and one for three years, to be determined by lot; and every year thereafter one such officer shall be elected in each of said counties for the term of three years."

Now on yesterday, we adopted the Ohio provision with regard to all the county and precinct officers. It may be this is a sort of innovation upon that, but we could add to the Ohio provision, "except as hereinafter provided"

Mr. KIRKPATRICK. Mr. Chairman. I will say that the proposition contained in this section looks fair. In the first place, it provides:

Section. 1. The legislature, at its next general session, shall provide by general law for township organization, under which any county may organize whenever a majority of the legal voters of such county voting at any general election shall so determine; and whenever any county shall adopt township organization, so much of this constitution as provides for the management of the fiscal concerns of the said county by the board of county commissioners, may be dispensed with, and the affairs of said county may be transacted in such manner as the legislature may provide, and in any county that shall adopt township organization the question of continuing the same may be submitted to a vote of the electors of said county at a general election, in a manner that shall hereafter be provided by the legislature; and if a majority of all the votes cast upon the question shall be against township organization, then such organization shall cease in said county, and all laws in force in relation to counties not having township organization, shall immediately take effect and be in force in such county. No two townships shall have the same name, and the day of holding the annual township meeting shall be uniform throughout the state."

Now, this proposition, as I say, looks fair, if the legislature performs this duty enjoined upon them. The people of any county may vote for a board of supervisors, they may also change back to the county commissioner system, if they wish. Now, does not this render the counties subject to constant change?

Mr. TOWLE. Mr. Chairman. I believe in the report as it now stands. It is not possible for us yet to have these township organizations. But the time may come when some of those large counties, those for instance having twenty or thirty townships may desire this system. I believe further, the board of county commissioners should be retained until the county is settled. It is the unanimous desire of the counties to have good bridges. We should retain the section as it now stands. Let the legislature pass a general law providing that if counties may wish, hereafter, to do so, it shall provide the manner in which it shall be done. It shall say who they shall be and give them jurisdiction. I have no objection to striking out the article. Let the whole subject matter be left to the legislature. Now most of the states in the west cling to the old county commissioners. The great state of Missouri, I believe, is managed in the same way, three county judges, who have the business in part, of county commissioners. I am sure there ought to be township organizations. But, whether it is better to adopt a constitutional provision, making it obligatory upon the next legislature to provide for it by general laws. I am not exactly prepared to say. But I believe, at least, we ought to have uniformity in all our laws and their administration, as well as this, and perhaps some day we may supersede it with a better system. In some counties, the power was such these bridges could not be built, because the precincts are unable to do it. There is a bridge fund raised by law. That bridge fund is under the control and direction of the county commissioners, the money to be spent in such a way as their wisdom shall see fit. I believe there is no law declaring how that shall be done. Now, sir, I think if this were left to the townships, that many times it would work hardship. There are bridges to be erected pertaining to their duty in which they must have an interest. Why should the expense of the improvement be imposed upon the people of that locality? I think such a burden ought to be imposed upon the county. I think there might be a law providing for this in a single provision.

Now, in Nebraska, when this territory was first organized, the county judge system was adopted. Since that was entrusted to the legislature, they provided for the county commissioner system, which I believe has generally worked well. This township representation cannot apply because our counties are now divided into three districts containing an equal population, as near as may be. But if we now adopt the township system, the representation as I have shown will be unequal.

Under our present law the supervision of roads and bridges is in the hands of the county commissioners, and they also have the apportioning of the road tax and levying upon the land. It seems some had occasion to complain of that power, and wanted to know with regard to the expenditure of its money. But, sir, it is a particular provision because it required the bridge fund to be under their control and the county commissioners must spend it in the case provided, if this was not for the convenience of the county, under the fence law.

Now, sir, so far as I understand this matter, I am in favor of the county commissioner system. It was the system of the state of Ohio, and I believe it to have worked very well, simply, from its continuance in that great state. I claim it does work well and wisely. About the history of its adoption in Iowa, I think it was established at an early day. I believe at the time of the organization of Iowa as a territory, it had the county commissioner system. They abolished it, and instead adopted the county judges, making one officer to have charge of the levying of taxes, to have charge and supervision of almost all of what would apply to county commissioners, they also made him judge of probate matters for the county.

In relation to the election of certain officers, they adopted the principle of the supervisory system, I believe. That appears not to have given general satisfaction, so they have returned to the old county commissioner system at this time. I suppose for good cause. Now I have suggestions which cotemplate changes in the provisions of this section. I did live in Ohio when we had township organization as has been explained by the gentleman from Douglas (Mr. Manderson.) We had under a law a county clerk and county treasurer. The commissioners had charge of the poor of their respective townships. I hope that law has been changed by this time.———

Mr. MANDERSON. They have changed it in reference to the poor, but still have the county commissioners.

Mr. KIRKPATRICK. The paupers were sold out to the lowest bidder to the persons who would agree to keep them for the lowest sum of money, and no power was given by which an appeal could be made to their friends who were able to support them. I remember an instance of an old couple, very aged, though they had a son who lived in a brick house and who was able to support them. They also had charge of the roads.

The result would be to adopt one system in one county and a different one in an adjoining county. I think I can see the difficulty. We have under our present law a section in relation to the establishment of roads. Its county commissioners direct when a road shall cross a line, the location is continued. Then again, sir, I think this township system may not be always fair, according to the argument of the gentlemen, they propose to leave it in future to be of uniform size, about six miles square. They are by no means equal, they cannot be where the supervisor system prevails, where in some the officer represents different precincts, whether he represents one or one thousand or another represents one hundred people, the representation is by no means equal.

Mr. ROBINSON. Mr. Chairman. I say that the passing of the section as reported by the committee would be wrong. I must confess from what I have seen of the county commissioners, I am not as I believe very much in love with it. It has been said that we should retain it because it nearly approaches the county supervisor system recommended here. When there are but few people in a county, their diversity of interests can well be represented by three commissioners elected from different parts of the county. But when the counties become thickly populated, when the amount of business in our old board becomes immense, I think that board should be enlarged. I see no reason why we should so hang to that which is desired. If there be any duties to be imposed upon these supervisors, (as they will probably be called) it will lessen the duties that will be performed by the board of county commissioners. I have no objection to the name, but to retain them with the very small portion of power they have, merely because they are called county commissioners, seems to be an absurdity. I am not sufficiently acquainted with the workings of the Illinois system of township organizations to say much about it. I have only seen it superficially. I know that in each township there is a supervisor elected, which is a little legislature when assembled. It seems to me when these counties grow up, become populous, there is just as much reason for insisting on this township organization as that there shall be a large number of senators and representatives. Why not have one senator and two representatives elected by the state at large. There are many objections to it, they are not sufficiently acquainted, they are not able to grasp the whole interests of the state, further than that it is dangerou s to entrust so much power and money into the hands of any three men; it ought to be distributed. Now, sir, I undertake to say that in our present system there is entirely too much speculation in the eyes of our county commissioners; they can vote bonds to build bridges, those bonds are generally at a discount, cannot be readily cashed; our commissioners often relieve the people of the burden and buy them themselves; I would like to see that stopped. This system of township organization would wipe out this corruption. I believe there is more money wasted and stolen by our county commissioners than would run the whole state government every year. The fact is there is more money handled by counties in Illinois, more money disbursed by county officials than by the state officers. You take the City of New York, it takes more money to run that city than to run the whole state of New York. I believe it takes more money today to run the county of Douglas, and seeing to their county interests, than it takes to run the state government of Nebraska. The Illinois system has been alluded to, but it is by no means certain that our legislature will adopt that system. I am inclined to think the solons of the state of Nebraska will be able to adopt a system which will work well.

Mr. PHILPOTT. Mr. Chairman. I am in favor of township organization, but am not in favor of a system of the kind proposed in the article now under consideration. County commissioners are charged with certain duties for the county and also certain duties which partly belong to precincts or townships. Sir, give us just and wholesome township organization, and many powers exercised by county commissioners would be taken from them, look at the system suggested by the gentleman from Douglas (Mr. Manderson), which provides for three township trustees, township clerk, treasurer, etc., to discharge such duties as relate to the county. Let us have something like that, and all these matters will not come up before county commissioners. I would leave them existing, charged with such duties and such power as properly belong to the government of the county, stripped of such duties and good government as properly belongs to townships, and charge the township government only with the management and control of the government and affairs of the township. The most equal division is that of government townships six miles square in all the counties west of the river. Most of the counties now formed are four townships square or four by six, it is likely the legislature would not divide up those townships but into government subdivisions; they would then be large enough and I think the legislature would be most likely to divide them into as many townships as there are government townships in the county I do not deny the power. Now, then, for these reasons I am not in favor of this article, and I wish the gentleman could look at the matter in this light, that the abuses attributed to our county government are in that the county government is charged with the government of the precinct or township. I want to strip them of that, and I want a county government and a township government and that this constitution shall recognize that; but not a township government that shall ignore and wipe out a county government. There are interests to be looked after and persons whom we wish to look after those interests. I shall be compelled to vote against this article.

Mr. PRICE. Mr. Chairman. It seems to me that a majority of the argument here is in fact to oppose the idea of the supervisor system of government It seems to me, too, that this is not a proper place for that argument, and gentlemen differing from this argument would necessarily defend the supervisor system of government. The practical working of it is misunderstood by many members of this convention. If we were prescribing the duties of supervisors and county commissioners it would be correct. This gives the people the opportunity of choosing between the two systems; and if the people of an adjacent county think they could make a greater number of persons look after claims and attend to expenses and that the interests would be better attended to, then let the county have the choice in that respect. I do not, however, wish to defend the system of county commissioners. I think that persons should not be called on to do so here. But give counties the opportunity of improving their position if they choose to and in the way they choose.

Mr. WEAVER. I am in favor of the county commissioner system; but I do not see how that argues against this section. There are three points in this section. Take them together they are good provisions I think. In the first place it is provided that the legislature may provide for township organization, that does not create township organization in any county in the state. There is a provision which if any county wishes to avail itself it can do so, and I can see no reason why any county may not if it wishes to and a majority of any county wish to avail themselves of this provision they can. There is a provision which, after they have adopted county organization, gives them the privilege by a majority of the voters to discontinue living under this organization if they find it does not work satisfactorily. And some have argued against this section for the reason that when the township organization has been adopted it would do away with the county commissioner system. I ask gentlemen if it is their idea to run a double authority—a double expense —in counties, I hope not. When the township organization has been established I think that will be sufficient reason why the county commissioner system should cease and the authority given into the hands of the supervisors. I hope the section will remain untouched.

Mr. ESTABROOK. I imagine that this question is of more importance than we all imagine at the first blush. We talk a good deal about salaries and the amount of expense to carry on state institutions, but I think if gentlemen will look at the figures that it will be found that which burdens Nebraska today is that which is connected with our county government. It seems to vibrate between a board that should come together representing different portions of the county—and you may call it the commissioner system if you please or the system of township government —represented by what is usually called supervisors, or it may be,—as it was at one time in Iowa and Illinois and cities of most of the southern states; matters pertaining to the county government may be managed by one individual called a county judge. Now as between the present system of these commissioners which are elected in one particular district, but which in the county of Douglas today so works that two reside in Omaha—rather than perpetuate that system I would prefer that one man competent to the task be set apart to these duties. He should be a lawyer who knows the bearing of the law and one who should understand when a tax is levied or when anything is done that affects, pecuniarily, the interests of the inhabitants of the county; that his powers shall be limited, not by what he may imagine to be the best or the spirit of the law, the law of his creation in his power, but by the very letter of the law itself. Now gentlemen, when they want to say anything which makes me shudder in my boots they say "tax." Do they think that frightens me? Have you ever been present to attend a session of the board of county commissioners in Omaha? In the first place they are neither fish nor fowl. They do not sit solemnly nor are they a board simply. They are then gentlemen who go in hastily and consider something without form or dignity or style or formality; dodge out and away they go; taking no responsibility and scarce any thought. And when a proposition comes up in the way of a claim instead of first turning to the law of their creation and see whether that power is conferred, they seem to enquire whether it will please a particular friend; promote the interest of somebody for whom they have a personal regard; and hence it is without paying regard to law in the levying of taxes, they take counsel of caprices, prejudices or are moved upon by their ignorance and hence the immense burdens. In my own case, I found, when I had returned from an absence of a year or so, somebody had seen fit to try to get $15,000 worth of property by an expenditure of $5. I asked "will you take script to settle this matter?" No, we must pay them 40 per cent in gold for what we paid script for. Now, I induced a little examination into the affairs of the county; and I have kept myself somewhat posted from that time to this. I found, in the first place, that taxes were being levied, in a very good degree, for a matter of county indebtedness, that was not only illegal in its inception, but was absolutely fraudulent, positively void, and the question would arise there. "Is the tax levied for the purpose of paying and holding in part a matter of indebtedness which was fraudulent or illegal on its inception"—is that a proper levy? When you have levied it and attempt to constrain men to pay it, does it not vitiate the entire purpose? And I asked the court to settle that question. Is it right that the gentleman from Saline (Mr. Vifquain) should shiver and torture and pain me by charging me with avoiding my taxes? It is not true that I refused to pay. It is true that in that question I have invoked the law; and those that would constrain me to pay into the treasury what they demand, they insist that I shall pay, the law, and that in spite of the law, and against the law, and in opposition to the law, that I shall put my hand into my pocket and take out of my purse, without any authority of law. They sought to collect from me money which they have no right to, under the name of taxes—they are seeking to collect the same from you. I have not trampled upon the laws—I invoke the law and I ask whether the individual who comes to collect taxes from me, in the name of the law, comes by authority of the law. My advice was sought at one time as to the legality of securing property to the amount of several thousand dollars. I said it could not be collected legally and that I as an individual protested against it. That they could allow illegal demands if they pleased, but that I held a veto in my own hand and would apply it for my own relief. I have invoked the decision of the courts upon that point, and the courts have held in every case that I need not pay. When you impose taxes for a claim that is illegal, you vitiate the entire tax levy. There is another fact that seems to be lost sight of, by the tax gatherer. There has not been an hour since we have formed a government, that the law did not require that before you could reach the realty you must exhaust the chattels and if the tax gatherer fails to make the amount, then he must make returns to the county treasurer. There is something defective clear to the bottom here. Now, it is true that it is cheaper to have three commissioners—but it is true also that one man is cheaper even than three. This may be the argument of monarchies that it is cheaper to have one man sit upon a throne. While it is true that in sparsely settled portions of Nebraska one man might be better than three, three are better than a larger number. Yet as this state becomes settled up, I should hope to see every township represented. In Wisconsin they attempted to abolish the county commissioner system, but failed. After awhile the township organization was adopted in the eastern portion of the state, leaving the western part with the county commissioner system, but in a short time the western part of the state also adopted the system of township organization. This board of supervisors is not a board of whipper snappers who come in with their whips in their hands, perhaps, and after doing their business, turn and run again. It is an orderly board, and does its business in a business way. Then again, they can call upon the county or district attorney for advice, which is given in writing. Your county commissioners take into consideration their friendship for Tom, Dick and Harry, and let contracts, for instance, without looking into the law, so as to see whether certain expenditures are allowed. I say that the financial affairs of your counties today, are very badly managed. The commissioners are generally farmers; they mean to do right, but when demand is made for the payment of a certain contract, they don't inquire whether this contract was made in pursuance of the law, and hence the burdens under which you groan. I say it don't annoy me when you talk taxes, because I know that these commissioners are not levying taxes under the law. Do you suppose I am going to pay any consideration to the demands of the assessors, or tax gatherer? The time will come when the officers will learn what their duties are. I am in favor of leaving this matter to the legislature. In the very sparsely settled counties I think it is a better way to elect a county judge who will fill the vacancy made in the judicial article. Then give us a system by which each county shall be represented in the board of county officials, and make the board large enough so that it cannot be bought.

The CHAIRMAN. The question is upon the motion of the gentleman from Otoe (Mr. Campbell) to strike out the first section.

The committee divided and the motion was not agreed to.

Mr. TOWLE. Mr. Chairman. I move the adoption of the section.

The motion was agreed to.

Mr. STRICKLAND. Mr. Chairman. I move that the committee rise, report progress, and ask leave to sit again at 2 o'clock.

Motion was agreed to.

The CHAIRMAN. Mr President. The committee of the whole have had under consideration the report of the committee on counties and ask leave to report progress, and beg leave to sit again.

Mr. TOWLE Mr. President. I move we adjourn until one o'clock.

The motion was agreed to.

So the convention (at twelve o'clock) adjourned.

Afternoon Session.

The convention met at one o'clock and thirty minutes and was called to order by the president.

Privilege of the Floor.

Mr. TOWLE. Mr. President. I desire to offer a resolution.

The secretary read the resolution, as follows:

"Resolved, that this convention extend to the honorable J. F. Gardner and the Hon. W. Koenig the privileges of this floor."

Mr. STEVENSON. I move to amend by adding the name of Judge Wisner of Iowa.

The amendment was accepted and the resolution agreed to.

Mr. STEWART. Mr. President. I have a resolution to offer.

The secretary read the resolution, as follows:

"Resolved, that the privileges of this floor be extended to the Hon. George W. Collins of Pawnee county."

The resolution was adopted.

Precinct and Township Organization.

The PRESIDENT. Gentlemen. The special order is going into committee of the whole on the report of the committee on township and precinct organization.

So the convention in committee of the whole—Mr. Sprague in the chair—proceeded to consider the report of the committee on township and precinct organization.

The CHAIRMAN. The second section reads as follows:

Sec. 2. There shall be elected in each of the counties in this state three officers, who shall be styled The Board of County Commissioners, whose term of office shall be three years, and who shall hold sessions for the transaction of county business as shall be prescribed by law; provided, that the county commissioners now elected in the several counties of the state shall hold their office for the term for which they were elected.

Mr. BOYD. Mr. Chairman. I have a substitute I wish to offer for the section.

The Chairman read the substitute, as follows:

Sec. 6. At the first election of county officers under this constitution, there shall be elected in each of the counties in this state, not under township organization, three officers, who shall be styled "The Board of County Commissioners," who shall hold sessions for the transaction of county business as shall be provided by law. One of said commissioners shall hold his office for one year, one for two years, and one for three years, to be determined by lot; and every year thereafter one such officer shall be elected in each of said counties for the term of three years.

Mr. BOYD. The same proposition I offered on yesterday.

Mr. CASSELL. Mr. Chairman. I think the section adopted this morning covers that whole ground.

Mr. HASCALL. Mr. Chairman. I stated that this subject contemplated another provision on the subject of county commissioners. This was taken from the Illinois constitution. Under this section in our constitution there is no provision that the fiscal affairs of the county shall be regulated by the county commissioners. This section supplies a blank in this article and unless we insert this the section we have already passed will be fruitless.

Mr. KIRKPATRICK. Mr. Chairman. I think that this substitute is objectionable in that it will turn all the present officers out of office.

Mr. GRIGGS. It says in the substitute that they shall be elected in each county not under organization at the time of this election. I, will ask the gentleman to have the words "not under township organization" stricken out.

Mr. BOYD. I will agree to that.

Mr. GRIGGS. Now, Mr. Chairman, that is different. The committee thought it would be best to have the officers serve out the terms of office for which they were elected. I don't really see what is to be gained by electing them again at the next election. I see no reason why they should not be continued in office.

Mr. TOWLE. Mr. Chairman. I hope the substitute will not be adopted. In the first place it is not proper we should provide for the election of county commissioners under this head. I do not believe that the people of this state are desirous of sweeping out all the officers as far down as county commissioners. There is a positive reason why they should not all be elected at the same time, it takes a commissioner at least one year to become conversant with the affairs of the county. I am opposed to legislating out the commissioners.

Mr. GRAY. Mr. Chairman. I think I understand the force of the proposition, it is to vacate the office of county commissioners so as to elect new. I do not see any reason in applying the same rule to them as we applied to the state officers. It seems to me there is no justice in turning out county commissioners. I know my county will not thank the convention to turn out her officers. I trust the substitute will not prevail.

Mr. PHILPOTT. Mr. Chairman. I am opposed to the substitute. It seems to me it was the sense of the people of this state as far as I was enabled to acquaint myself, it was the desire that there should be a clean sweep of any other than state; I have not heard anything of that kind from the people that there should be a clean sweep of any other than state officers. I believe it is not wished for and there is no reason for it.

The substitute was not agreed to.

Mr. TOWLE Mr. Chairman. I move the adoption of the section.

Mr. HASCALL. I move to amend by striking out the word "elected," and insert "in office."

The amendment was not agreed to.

The section was adopted.

Mr. SPEICE. Mr. Chairman. I move that the committee now rise, report the bill back to the house, and recommend its adoption.

The motion was agreed to.

Mr. SPRAGUE. Mr. President. The committee of the whole have had under consideration the report of the committee on township and precinct organization, and instruct me to report the same back to the convention as reported by the committee and recommend its adoption.

In Convention.

Mr. GRIGGS. Mr. President. I move that the convention now proceed with the further consideration of the report of the committee of the whole upon township and precinct organization.

The motion was agreed to.

The President read the first section, as follows:

Sec. 1. The legislature, at its next general session, shall provide by general law for township organization, under which any county may organize whenever a majority of the legal voters of such county voting at any general election shall so determine; and whenever any county shall adopt township organization, so much of this constitution as provides for the management of the fiscal concerns of the said county by the board of county commissioners, may be dispensed with, and| the affairs of said county may be transacted in such manner as the legislature may provide; and in any county that shall adopt township organization the question of continuing the same may be submitted to a vote of the electors of such county at a general election, in a manner that shall hereafter be provided by the legislature; and if a majority of all the votes cast upon that question shall be against township organization, then such organization shall cease in said county, and all laws in force in relation to counties not having township organization shall immediately take effect and be in force in such county. No two townships shall have the same name, and the day of holding the annual township meeting shall be uniform throughout the state.

Mr. HASCALL. I desire that the legislature shall have the power, at any time, and I move to strike out "at its next general session."

Mr. GRIGGS. I hope that motion will not prevail. I hope it will be left obligatory with the legislature. It will do no harm to leave it in and maybe do good to leave it in.

Mr. HASCALL. It is a standing injunction for all succeeding legislatures, and I think it restricts it instead of making it comprehensive as it ought to be.

Mr. MAXWELL. Mr. President. I have no objection to the section either as it stands or as amended, yet I think it is stronger as amended, and conveys the idea better than at present. My idea is that the section is unnecessary, and might be as well stricken out. The government of the United States is entirely a government of delegated powers. It is not so in a state constitution, which simply restricts and prescribes the bounds. The legislature has the power to do this without this section and there is no necessity for it; we are making a cumbersome constitution, which seems to me, entirely unnecessary. The second section is necessary but the first is not. Out of deference to the chairman I shall not move to strike it out; but I think it ought to be.

The amendment of Mr. Hascall was agreed to.

Mr. LAKE. I move to amend the section, in the eleventh, by inserting after the word "townships," the words "in any one county."

The amendment was agreed to.

The first section, as amended was agreed to.

The President read the next section, as follows:

Sec. 2. There shall be elected in each of the counties in this state three officers, who shall be styled The Board of County Commissioners, whose term of office shall be three years, and who shall hold sessions for the transaction of county business as shall be prescribed by law; provided, that the county commissioners now elect in the several counties of the state shall hold their office for the term for which they were elected.

The second section was adopted.

The PRESIDENT. The question is on the adoption of the article.

The article was adopted, and ordered engrossed for a third reading.

Report from Engrossment Committee.

Mr. REYNOLDS. Mr. President. Your committee on engrossment report that they——

Mr. TOWLE. I move that the convention resolve itself into committee of the whole for the purpose of considering the report of the committee on Banks and Currency.

The motion was agreed to.

So the convention went into committee of the whole for the consideration of the report of the committee on Banks and Currency, with Mr. Wakeley in the chair.

ARTICLE——

Sec. 1. No state bank shall hereafter be created, nor shall the state own or be liable for any stock in any corporation, or joint stock company or association for banking purposes, now created or hereafter to be created.

No Act of the legislature authorizing or creating corporations or associations with banking powers, whether of issue, deposit or discount, nor amendments thereto, shall go into effect or in any manner be in force, unless the same shall be submitted to a vote of the people at the general election next succeeding the passage of the same, and be approved by a majority of all the votes cast at such election for or against such law.

Sec. 2. Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors over and above the amount of stock by him or her held, to an amount equal to his or her respective stock or shares so held, for all its liabilities accruing while he or she remains such stockholder.

Sec. 3. The suspension of specie payments by banking institutions on their circulation, created by the laws of this state, shall never be permitted or sanctioned.

Every banking association now, or which may hereafter be organized under the laws of this state shall make and publish a full and accurate quarterly statement of its affairs (which shall be certified to under oath by one or more of its officers) as may be provided by law.

Sec. 4. If a general banking law shall be enacted it shall provide for the registry and countersigning by an officer of the state, of all bills or paper credits designed to circulate as money, and require security to the full amount thereof, to be deposited with the state treasurer, in United States or Nebraska state bonds, to be rated at ten per cent. below their par value; and in case of a depreciation of said bonds to the amount of ten per cent. below par, the bank or banks owning said stock or bonds shall be required to make up said deficiency by depositing additional stocks or bonds; and said law shall also provide for the recording of the names of all stockholders in such corporations, the amount of stock held by each, the time of any transfer thereof, and to whom such transfer is made.

The Chairman read the first section, as follows:

Section 1. No state bank shall hereafter be created, nor shall the state own or be liable for any stock in any corporation, or joint stock company or association for banking purposes, now created or hereafter to be created.

No Act of the legislature authorizing or creating corporations or associations with banking powers, whether of issue, deposit or discount, nor amendments thereto, shall go into effect or in any manner be in force, unless the same shall be submitted to a vote of the people at the general election next succeeding the passage of the same, and be approved by a majority of all the votes cast at such election for or against such law.

Mr. LAKE. Mr. Chairman. I move to amend by striking out the eighth line.

The motion was agreed to.

Mr. MYERS. Mr. Chairman. As a test of the sense of the committee, I shall move to strike out either the whole section or a part of it. There are to be no state banks established without a submission of the proposition to a vote of the people, and then follow such restrictions. If the vote is favorable it will establish state banks, with full banking powers. In the light of past experience this is of doubtful policy. The necessities of the late rebellion gave the country a reliable paper circulation, well founded which relieved the government of pressing necessities and the people as well. I do not see any good reason for the furnishing of any opportunity to local state capitalists to break in upon this national currency by authorizing state banks to issue paper money. I have always been opposed to state banks of issue, on account of the loss and inconvenience entailed upon all classes, the rich and poor, especially the latter, and I cannot support this section in its present state. We have now a national currency that answers all legitimate purposes, affording discount and deposit amply sufficient for all business in every part of the country. I do not object to private bankers, who are a very useful class of men, regulated by state law. Beyond this we should not go. When the national system is given up, and it has many years to run under the law, it is then time to think of opening state banks. We have had sufficient experience under the old system to scan it very closely indeed before we again fall into its errors. We have certainly endured many local and general disasters under the operation of the old system, which nearly threw the whole country into bankruptcy. The banks could not pay, neither could the people, paralyzing every branch of industry. I think all of this section should be negatived or amended, with the exception of the first clause which provides that no state bank shall hereafter be created.

Mr. GRIGGS. Mr. Chairman. While I am opposed to state banks, I do not see the policy of striking out the whole article,—for if we strike out the first section, we will undoubtedly strike out the whole article. We don't know when the general government will do away with the national banks. Then it will be necessary that the state should charter state banks. The day may not be far in the future when we will no longer have the present currency. I think it would be wise to leave it as it is.

The CHAIRMAN. The question is upon the motion to strike out the first section.

The motion was not agreed to.

Mr. WEAVER. Mr. Chairman. I move to strike out the words "nor amendments thereto," in the fifth line, and insert thereafter the word "legislature," in the fourth line.

Mr. LAKE. Mr. Chairman. I think the section is just right as it is; the language is proper.

The CHAIRMAN. The question is upon the amendment offered by the gentleman from Richardson (Mr. Weaver.)

The amendment was not agreed to.

Mr. TOWLE. Mr. Chairman. I move to amend by inserting in place of the words stricken out of the 8th line, after the word "election," in the 7th line, the words, "on said question."

The CHAIRMAN. The question is upon the amendment offered by the gentleman from Richardson (Mr. Towle.)

Mr. LAKE. Mr. Chairman. One word. I would much prefer that a proposition of as much interest to the people as this should at least command a majority of all the votes cast upon this question. It is a matter of general interest, and I have known such cases when no vote either for or against the proposition would be cast, on account of the dereliction of duty on the part of some person failing to have ballots provided. Now I don't think that the people of this state should have foisted upon them a banking law unless it has the sanction of such act. If it so provides in the act, that all votes not cast for the proposition should be counted against it, it should command at least the affirmative voice of the majority of the votes of the state.

The CHAIRMAN. Let me state to my colleague (Mr. Lake) for information that in the supreme court of Wisconsin it was held that the words "at such election" meant the votes cast on the subject.

Mr. LAKE. If that is the case I think the words should not be there. They are mere surplusage.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Richardson (Mr. Towle.)

The amendment was not agreed to.

Mr. LYON. I move to strike out all the section after the word "created" in the first line.

Mr. ROBINSON. Mr. Chairman. I move to strike out all the section after the word "created" in the third line.

Mr. LAKE. Mr. Chairman. Can that be called an amendment to an amendment?

Does not the motion of the gentleman from Burt (Mr. Lyon) include that motion?

The CHAIRMAN. I think the amendment to the amendment is in order.

Mr. ROBINSON. I will withdraw my amendment now.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Burt (Mr. Lyon.)

The committee divided and the amendment was agreed to.

Mr. CASSELL. Mr. Chairman. I would ask whether this affects banks now in existence?

Mr. MYERS. No, sir, this only applies to those hereafter established.

Mr. PHILPOTT. Mr. Chairman. I move an amendment to the section as it now stands by adding the words "nor shall the state own or be liable for any stock in any corporation, company or association."

The CHAIRMAN. I do not think the amendment is in order. The committee have just stricken out those words.

Mr. ROBINSON. I have an amendment which I would like to offer to be added to the section.

The Chairman read the amendment, as follows:

"Nor shall the state be interested in any corporation formed or hereafter to be be formed for banking purposes."

Mr. LAKE. I will inquire Mr. Chairman, if those are not the words that have been stricken out?

Mr. ROBINSON. How does the gentleman know but that the vote was made by some on account of the wordage?

The CHAIRMAN. The chair is of the opinion that the amendment is in order.

The amendment was agreed to.

The CHAIRMAN. The question is on the adoption of the section.

The section was adopted.

The secretary read the next section, as follows:

Sec. 2. Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors over and above the amount of stock by him or her held, to an amount equal to his or her respective stock or shares so held, for all its liabilities accruing while he or she remains such stockholder.

Mr. MANDERSON. Mr. Chairman. I move to strike out the section.

Mr. LAKE. Mr. Chairman. I am opposed to the motion. If an individual engages in the business of banking and holds himself out to the world as responsible for monies received, or bills which may be issued, that there should be at least this amount of liability, at least double the stock held by it. If that principle is engrafted upon our fundamental law, they will know before entering upon the scheme of banking, which is known to be quite remunerative, this is the liability they engage under; it is none too much and I should regret very much to see it struck out. If I were to devise any other scheme it would be to increase the liability even further than is provided for in this section. I hope it will be retained.

Mr. MANDERSON. Mr. Chairman. It is proper, perhaps, that I should explain why I make the motion. It is not that I am opposed to the principle that those owning stock in a banking corporation should be held for as much again stock as they own, because I think this principle should apply simply to banking corporations. I do not think this is the place for it. I would like the provision that every stockholder shall be liable over and above the stock by him or her owned, in an amount equal to such stock, and it is for that reason, because I would have this apply to all stockholders, because I would draw no distinction between a man investing his money in a banking corporation and a man investing his money in a manufacturing corporation, that I propose to strike it out.

Mr. BOYD. Mr. Chairman. I think there is a great difference between a man investing his money in a bank or in a manufactory. The man in the bank tells the world he will receive deposits to five or fifty times the amount of capital stock, the manufacturer receives only his own money.

The motion was not agreed to.

Mr. ROBINSON. Mr. Chairman. I move to strike out the words "or institution" and insert the words "company or association."

The motion was agreed to.

Mr. MANDERSON. Mr. Chairman. I move to strike out the words "a banking" in first line and add the letter "s" to each of the words "corporation." "company" or "association."

Mr. ROBINSON. Mr. Chairman. I move to amend by striking out the words "corporations, companies or associations," and inserting the words "any company, corporation or association."

Mr. MANDERSON. Mr. Chairman. I accept the amendment.

Mr. ROBINSON. Mr. Chairman. Although I amended the motion I do not believe I am in favor of the change. We have incorporated——

Mr. LAKE. I hope we shall let this section remain as it is. I think it is as nearly right as we can make it. I do not suppose it is the sense of this committee that associations of individuals organized for the purpose of carrying on any enterprises other than that of banking shall be subjected to the same restrictions as should be thrown around the business of banking. I believe, sir, that a provision of this kind, applied to associations of individuals organized for the purpose of manufacturing in this state, would be equivalent to a death blow to organizations for that purpose. Individuals may be willing to put a certain amount of money into enterprises of that kind. They may say, "For the purpose of starting this enterprise we are willing to invest $5,000 or $10,000, and if it proves successful, we will invest still more." But would any person do this if he thereby subjected his entire property to the payment of the debts of the corporation? And it should be borne in mind that individuals dealing with such associations can trust them or not, as they see fit. They do not hold themselves out to the people of the state as soliciting money on deposit as do banks, and persons engaged in private banking. They are simply organized for the carrying out of a business such as individuals cannot advantageously carry on singly. It may require a great deal of public spirit as has been frequently shown in this state, to carry on enterprises of this kind. Whereas, persons engaged in the business of banking for the purpose of preying, as it were, on the necessities of the people, are generally individuals of large capital; and the business is one which, requires that the government should throw around those who are trusting them, or who by necessity are compelled to confide their interests to their keeping all such safeguards as the experience of the past has demonstrated, are actually required for the safety of the people. A bank holds itself out as perfectly secure and amply responsible for all deposits that shall be made. And it is well known, that perhaps three or four, or even ten or fifteen times the amount of money the institution has of actual capital, is frequently deposited with it for safe keeping, and the public have no means of knowing what its available capital is, exactly at stated periods. And I think, with the gentleman from Lancaster, that the two kinds of corporations or associations of persons referred to stand entirely on a different basis, and they should be regulated by entirely different laws. While, of course, it is proper to throw all reasonable safeguards around this kind of business, and give all reasonable security to persons dealing with banks, I would not, Mr. Chairman, strike a death blow at all public improvements and manufacturing enterprise that require combined capital, by engrafting any such section as this in our organic law. We are dealing with banks alone, and the object of engrafting such an amendment as is proposed to this section, is, evidently to kill the section. As it now stands, it throws an adequate safeguard around the individual doing business with banks, and I believe that nothing less than this should be thrown around them. When we get to the article on corporations generally, other than banks, it will be well enough to apply the remedy, which will be proper in that case, but in such as we are now dealing with, banks and them alone, let us make such provisions in respect to them as are proper. This section would be entirely inapplicable to an article of this kind if the amendment of my colleague should obtain.

Mr. MANDERSON. Mr. Chairman. I agree with what has been said, that this section, as proposed to be amended, should not perhaps, if passed as proposed to be amended, find place in this article. I propose that the rule sought to be established shall apply to all incorporations, and we may as well meet that question here as anywhere. It is proposed to limit the rule to banking corporations. I wish to apply it to all, and if my motion should prevail the committee on revision and adoption can take out the section from this particular article on banks and place it in the article that applies to corporations generally. Gentlemen treat this proposition as though it was some novel idea. To relieve them of the idea that it is, let us see how constitutions stand with reference to this section. We are told that if we require of manufacturing establishments that the stockholders shall be liable to the creditors of the association to an amount equal to the amount of their stock, in addition to the stock, that it will be a death blow to manufacturing companies. What is the experience? I have but to recall to the memory of my colleague from Douglas, the history of the state from which he comes, Ohio. The proposed section is a provision of the constitution of 1850. And under it more corporations for manufacturing purposes, aye, for every purpose, under the sun almost, have been organized in the state of Ohio under this death blow of a law, than in any in the United States, except perhaps the state of New York The Ohio constitution reads as follows:

"Dues from corporations shall be secured, by such individual liability of the stockholders, and other means, as may be prescribed by law; but, in all cases, each stockholder shall be liable, over and above the stock by him or her owned, and any amount unpaid thereon, to a further sum, at least, equal in amount to such stock."

This provision we seek to engraft in other words, here. Now gentlemen draw a distinction between a banking corporation and one for manufacturing purposes. I see no such distinction in the matter of liability. We are told it requires more money to start a banking company than a manufacturing company. I say that the experience of men who have formed these corporations show the contrary. A, B and C with the paltry sum of $5,000 can organize a banking corporation and do a large business. They do their banking not only upon the $15,000 paid in but on the deposits of their bank. But A, B and C saw fit to start in this state a manufactory for the purpose of making agricultural implements, can they do it with any such sum of money? Say they start this fall, commence the manufacture of these implements, when would they get a return for their investment? Say they make 5,000 reapers and mowers for next year's trade, when would they receive back their money? The reapers and mowers might cost them $100 each. They would have to expend this large sum of money either out of their pockets or by running on their credit, and they would have to run until the harvest of next year before they can receive re-imbursement for the money they had laid out. So, I say, in manufacturing companies it takes more capital, and experience shows it, than to start a one-horse bank in some village. Now, we propose to apply this rule to all cases, that it may act for the benefit of the creditors

Suppose A, B and C start their bank. I take $1,000 and, having confidence in the men, deposit it with them. Suppose they fail, and the bank assets or the amount of the stock for which they are liable, will not pay their indebtedness, you propose that they shall be liable to an equal amount in addition; and if the stock pays but fifty per cent. on their indebtedness, that another fifty per cent. shall be paid out of their pockets to me.

Now A, B and C start a manufacturing establishment for the manufacture of agricultural implements, gas or anything else. They are men known to be rich, reputed to be wealthy—because of their reputation, because of the credit that attaches to their names in the community I agree to give them credit. I sell them goods or perform for them professional services to the amount of a $1,000. What do you propose? You propose to draw a distinction and say "If you were a creditor of a banking corporation (who are men with less capital) you should pay the whole," but you have run on the credit of better men and because they are a manufacturing company you shall lose one-half your claim. It seems to me, this is a distinction that should not obtain in fairness and equity. In Ohio these vast manufacturing corporations are formed every day, and in a little town of less than 10,000 people, in which I lived, there are twelve or fifteen of these corporations, preferring to incorporate under the constitution of Ohio rather than proceed as partnerships And I never heard it urged by any one of them that they should be relieved from any burden upon their shoulders by means of that constitutional clause. A body of men organize themselves; it may be Creighton, Kountze and Millard of Omaha, organize a company and put up a large manufacturing establishment. I have a general knowledge of the amount of stock. I look at the articles of incorporation in the office of the county clerk or of the secretary of state, and see it loosely stated; Millard owns so much; Creighton so much more and Kountze so much more. It does not give me any more insight into their business. They come to me for credit, and I credit them to the amount of $25,000—credit them because of the financial standing of these men. Time rolls on, and they are credited by other men. After awhile I hear of the failure of Creighton, Kountze and Millard. I have gone upon the same system of credit that I would have gone on had I deposited this $25,000 in their bank, and yet you propose to give me a greater security in the one case than you do in the other. I cannot look into the financial business of a manufacturing company, I can look into that of a bank. I say it is a rule which, in all fairness and justice ought to obtain in the one case as in the other. It is suggested that the banking business is a better way to make money than the other. Sir, this is not true. The men of this country who are making the money, are the railroads and other great corporations. As a general thing it is not the banks that are making the money.

The CHAIRMAN. The question is upon the amendment which reads "every stockholder in any banking corporation or association shall be liable for its liabilities"

The amendment was not agreed to.

Mr. MASON. Mr. Chairman. I desire to amend, as follows:

> Sec. 2. Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors over and above the amount of stock by him or her held, to an amount equal to the entire deposits and liabilities of such banking corporation or association.

The CHAIRMAN. The question is upon the amendment offered by the gentleman from Otoe (Mr. Mason.)

Mr. MASON. In support of this amendment, Mr. Chairman, I wish to say that at one time I saw over seven hundred women and children who had their little all deposited in a savings institution lose all they had, while members of the firm retired to the enjoyment of the money they had defrauded these poor people out of. Now, sir, the rule I propose to apply is, that the stockholders shall be liable for every dollar the company owes. Partners are liable, and members of a banking company should be liable in the same way. The proposition I have offered simply declares, if the amendment should prevail. that every individual member of the banking company is liable for the entire debts of the firm.

Mr. ROBINSON. Mr. Chairman. I wish to say a few words. Let us put a case. Suppose a banking company is formed. It has paid up stock to the amount of $100,000. The company therefore are liable to the entire $100,000 as individuals. Now their deposits may amount to over a million dollars. Now, is it right that they should be more firmly held than other corporations? I undertake to say that there are but very few men in this country who would be willing to invest their funds in any public enterprise unless there is a limit to their liabilities. I think the limitations ought to be uniform in ordinary corporations but in the case of banking associations I think that they ought to be liable to a greater amount. I am satisfied that the difference between banking corporations and other corporations ought to be five to one. If an association is formed here for the purpose of carrying on the manufacture of agricultural implements it is not expected they will engage in speculation. In the case of a banking association it is quite likely their liabilities will amount to five times as much as the liabilities of a manufacturing company, and of course the risk is much greater.

Mr. MAXWELL. Mr. Chairman.

There is this difference between banking companies and corporations. A manufacturing company will engage in putting up buildings for manufacturing; the members of that company are liable for the amount they have invested in their business. They do not run any great risks, and if they fail they should not be held liable to more than they have invested, but in the case of a bank, when parties hold themselves out to the world as doing a banking business, it seems to me there should be no restrictions as to the amount of their liabilities. If there be no restriction upon the amount of money they will receive, there should be no restriction as to the amount of their liabilities. I trust that the amendment of the gentleman from Otoe will prevail.

The CHAIRMAN. The question is on the amendment of the gentleman from Otoe (Mr. Mason.)

The amendment was agreed to.

The CHAIRMAN. The question is on the adoption of the section as amended.

Section two was adopted.

The Chairman read the next section, as follows:

Sec 3. The suspension of specie payments by banking institutions on their circulation, created by the laws of this state, shall never be permitted or sanctioned.

Every banking association now, or which may hereafter be organized under the laws of this state, shall make and publish a full and accurate quarterly statement of its affairs, (which shall be certified to under oath by one or more of its officers) as may be provided by law.

Mr. CASSELL. Mr. Chairman. I move to strike out the section.

Mr. ROBINSON. I move to strike out the first two lines. I do not understand what it means.

Mr. BOYD. It means no state bank, in case state banks should be created, should be allowed to suspend specie payments.

Mr. MASON. Sec. 1 provides that the legislature may authorize at a future time———

Mr. BOYD. It was stricken out.

Mr. MASON. Was it, Mr. Chairman?

Mr. CHAIRMAN. The principal part of section one was stricken out.

Mr. ROBINSON. Mr. Chairman. I have no doubt that under the article as it now stands that these banking associations can be created by an act of the legislature. There is nothing prohibiting it. Merely striking out this directory law will not give it force unless there is some meaning attached to it. Of course this does not permit the suspension of such payment and it could not be sanctioned by law. I do not see why the lines should be there.

Mr. WEAVER. What is the question?

Mr. CHAIRMAN. Mr. Cassell moves to strike out the section. Mr. Robinson moves to strike out first two lines.

Mr. TOWLE. Mr. Chairman. I think these lines ought to be retained. If the state has authority and right to create banking institutions, his portion of the section is upon its restrictive power. Now, where do we stand? With full power to create banks with unlimited powers with no restraint. In other words, under the article by general law it shall not be submitted to the people for their adoption, ratification, or rejection. It should have a limit. We have no shackles which bind up these corporations, and for that reason I am opposed to it. But we can add that section as we go on hereafter. Now, Mr. Chairman, I do not believe it is the intention of this committee, that banking institutions shall be prohibited from issuing notes to circulate as bank paper, but I believe it has the power if it ever becomes necessary, that they should put huge limitations around it so that the people of this state shall not be swindled out of their just dues. Now, it appears to me that there should be a change here. We find a certain kind of currency in circulation in the United States, which the laws of the United States declare to be a legal tender. I believe, that, under the constitution of the United States the power resides in the general government to declare what shall be a legal tender and what shall not be; that is within the limit of the United States. Let me state the thing as I already understand it. We find a certain kind of currency in circulation, our banks are built upon such a basis that whenever there is a fair delay the national banks and the other state banks of the United States would be paid out of the local divisions so far as that they would be obliged to redeem their notes, which give ten, twelve, fifteen, or even one hundred per cent. per annum. It should be amended so that as long as they have a local division created, so far the notes should be redeemable, should be paid. When we start out upon this act creating the treasury notes of the United States we will then stand upon a healthful specie basis.

Mr. ROBINSON. Would the effect of the adoption of the bill suspend the payment of specie?

Mr. TOWLE. I say the banks would pay in greenbacks.

The CHAIRMAN. The question is on the motion of the gentleman from Lancaster (Mr. Cassell) to strike out section three.

The committee divided and the motion was not agreed to.

The CHAIRMAN. The other motion falls—

The question is on the adoption of the section.

Section three was adopted.

The Secretary read the next section, as follows:

Sec. 4. If a general banking law shall be enacted, it shall provide for the registry and countersigning by an officer of the state, of all bills or paper credits designed to circulate as money, and require security to the full amount thereof, to be deposited with the state treasurer, in United States or Nebraska bonds, to be rated at ten per cent. below their par value; and in case of a depreciation of said bonds to the amount of ten per cent. below par, the bank or banks owning said stock or bonds shall be required to make up said deficiency by depositing additional stocks or bonds; and said law shall also provide for the recording of the names of all stockholders in such corporations, the amount of stock held by each, the time of any transfer thereof, and to whom such transfer is made.

Mr ROBINSON. Mr. Chairman. I move to strike out the section and renew the motion of Mr. Manderson as a substitute. "No banking corporations, company or associations shall ever be made a bank of issue of paper currency in this state."

The motion was not agreed to.

The CHAIRMAN. The question is on the adoption of the section.

Section four was adopted.

Mr. ROBINSON. Mr. Chairman. I move to insert as section four the following: "No banking corporation, company or association shall ever be made a bank of issue of paper currency in this state."

The motion was not agreed to.

Mr. LYON. Mr. Chairman. I offer the following as a distinct section: "No bank shall hereafter be created in this state."

The motion was not agreed to.

Mr. MAXWELL. Mr. Chairman. I move the committee rise, report the article back with amendments and recommend its adoption.

The motion was agreed to.

Mr. WAKELEY. Mr. President. The committee of the whole house have had under consideration the article reported by the committee on banking and currency, have adopted certain amendments to the article and instructed me to report back the article with amendments, and recommend they be adopted.

The report was adopted NEM CON.

Mr. TOWLE. Mr. President. I move the convention resolve itself into committee of the whole for the consideration of the report of the committee on railroads and corporations.

Mr. WEAVER. Mr. President. I move to amend that we take up the article on banks and currency in convention.

The amendment was agreed to.

Mr. WAKELEY. (President pro tem.) The first amendment reported by the committee of the whole is to section one; to strike out all after the word "created" in the first line, and insert "nor shall the state be interested in any company or association formed or hereafter to be formed for banking purposes." The question is on concurring in the amendment.

The PRESIDENT (pro tempore.) The question is upon the section as amended.

Mr. PHILPOTT. Mr. President. I move to amend the section as reported by the committee of the whole by adding the words, to section one, "Nor shall the state be interested in any other corporation, association, or company."

The PRESIDENT (pro tempore.) The question is upon the amendment offered by the gentleman from Lancaster (Mr. Philpott.)

Mr. SPRAGUE. Mr. President.

There seems to be some misunderstanding with regard to what was done in the committee of the whole. Now I understand the committee of the whole struck out the whole of section one after the word created, and inserted nothing.

The PRESIDENT (pro tempore.) That is a mistake, we inserted these words, "Nor shall the state be interested in any corporation, company, or association formed, or hereafter to be formed for banking purposes." Now the gentleman from Lancaster (Mr. Philpott) moves an amendment to the amendment by adding the words, "Nor shall the state be interested in any other corporation, association or company."

Mr. PHILPOTT. Mr. President. I withdraw my amendment.

The PRESIDENT (pro tempore.) The question is upon the amendment reported by the committee of the whole.

The amendment was agreed to.

The PRESIDENT (pro tempore.) The question is upon the section as it is amended, which reads:

"Sec. 1. No state bank shall hereafter be created, nor shall the state be interested in any banking company, corporation or association formed or hereafter to be formed for banking purposes."

Mr. MYERS. Mr. President. I move to amend by inserting after the word "bank" in the first line, the words "or banks of issue."

Mr. TOWLE. Mr. President. If this were an amendment proposed by the congress of the United States or by a convention of the states held for that purpose—for the purpose of taking away the privileges and rights of the states, and granting them to the general government, I should not object; but where a state, proud of its state sovereignty attempts to take away from itself those rights and privileges which no other state has yet given up or sacrificed—I think, Mr. Chairman, it is an act of foolishness which the people of the state will not think is fair. We might give these rights up to the general government, but under the circumstances, it seems to me it is an unpardonable sin for us to sacrifice our privileges in the way proposed. This article as it stands now, is a literal transcript of the national banking law, and sir, that national banking law expires by limitation in thirteen years and then, if we have no provision on this matter, we will find ourselves upon a sea of difficulty without rudder, or compass. We will have to fall back upon the old system, and I undertake to say that the wheels of the financial machine will stop unless there is some kind of provision made.

Mr. President, this is simply a spare spar. It is well known there is a great deal of objection to the present banking system. We know that this national banking law will expire by limitation. I take it, sir, that it is not the wish or desire of any member on this floor to entirely do away with the circulation of paper money But we simply say that when this national banking law is discontinued we wish still to go on under the same provision. We have already enacted that the stock holders shall be individually responsible for the amount of issue and deposits but don't let us tie up our hands and have to fall back upon a specie basis when we know that there is not half enough specie in the state to run the affairs of the state.

Mr. MYERS. Mr. Chairman. There has been three or four attempts to get this question before the convention but they have been unsuccessful until the present. I am glad it has come up fairly. I for one as a citizen of the state enter my protest against the power of banks issuing paper money; that is any bank that the state by its constitutional power creates. As to the banking system now prevailing—the United States treasury notes—they are the best the world ever saw. They are current everywhere—more current than those of the Bank of England. Now suppose we issue paper by the banks of the state—I fill my pockets with it and go east to Chicago—there I have to be shaved ten or fifteen per cent. instead of getting the worth of my money: Sir, I want a paper currency that will be good in any part of the United States, I hold that the system established by the United States is the best ever conceived. And if I ever have a chance to cast my vote for Salmon P. Chase for president of these United States I am the man to do it. And if this National banking system is to be discontinued in thirteen years I know that the voice of the people of the United States will be raised against such discontinuation until it is renewed and made permanent. Who wants to have a poor bill in his pocket and go back to the old "wild cat" system of paper issue by this or any other state. I say never, never, never, not with my vote at least.

Mr. ROBINSON. Mr. Chairman. We have been appealed to here, not to put this in for the protection of state rights and state sovereignty. I am inclined to think that I will go as far as any one will for state rights, but I take it that such things never become necessary except when the revenue of the government cannot come up to the expenses. I never knew before that there was any substantial objection to gold and silver until now.

Mr. TOWLE. There is one objection. We can't get enough of it.

Mr. ROBINSON. Well, sir, I take it that there is no difference whether there is much or little. It has no worth only as a circulating medium. Now, sir, if there is to be a bankable issue I say for God's sake let it be a state bank. Let it be a bank under the authority and control of our legislature and let the revenues of this state be pledged for the redemption of that paper. I do not believe in entrusting it to private individuals. I know it is next to impossible to throw these necessary guards that ought to be thrown around any such institution, and if any money is to be issued in the state of Nebraska, I am in for making that a state bank and nothing else, and let the revenue of the state be pledged for the redemption of that paper. I am in for this provision just as it stands, preventing the creation of any state bank or bank of issue. If the United States cannot provide for our wants whatever they may be, until that time arrives I am in for this prohibition.

Mr. LAKE. Mr. President. I have paid pretty strict attention to the several amendments proposed in committee of the whole and which have been since proposed in convention, to the article reported by the committee. I am quite satisfied that thus far we have not improved on the original article; I think we are getting further every step we take, from providing such an article as should be incorporated in our constitution. and if it be in order, Mr. President, I move to lay all of the proposed amendments to section one, on the table, with the view of moving the adoption of the section. It seems to me the provision which was struck out in committee of the whole was absolutely essential to the safety of our people in respect to these banks. I will read that portion which was stricken out:

"No act of the legislature authorizing or creating corporations or associations with banking powers, whether of issue, deposit or discount, nor amendment thereto, shall go into effect or in any manner be in force, unless the same shall be submitted to a vote of the people at the general election next succeeding the passage of the same, and be approved by a majority of all the votes cast at such election for or against such law."

We need in the constitution a provision of this kind, therefore I make the motion I now do to lay all pending amendments to this section upon the table.

The PRESIDENT (pro tempore.) The motion is not in order.

Mr. WEAVER. Mr. President. I believe this is a matter of more importance than we appear to give to it, and I sincerely hope the proposed amendment may not prevail. It is true today that we need no banks of issue, that fact is ominous to everybody, it is to be hoped that we may always be favored with the same currency we now have. And what is money or currency? It is simply the standing of men which bear the same relation to the commercial transactions of any country. In Illinois with the immense business done in Chicago in grain, etc., I apprehend the necessity of the banks, notwithstanding the amount supplied by the Federal Government. The day is not far distant in the future when the same necessity will exist here, whenever every quarter section of these prairies is put in cultivation for seventy-five miles from the river. It will take immense sums of money to handle the products of the country, and those sums of money will always bear a certain given relation to the commercial transactions of the country, without its industry is to a certain extent paralyzed, commerce ignored. If the time should come when that paralysis could be relieved by a bank of issue, we would not feel disposed to take away from the legislature the power to grant this. No injury could be done, no wild-cat money could be issued and it seems to me we had better leave this power. I said that at the present time the federal government is disposed to furnish us with greenbacks which I greatly prefer. I myself hope it always might continue in a supply sufficient to meet the demands of commerce, and change the products of the commerce from one portion of the country to the other. It can do no harm at least to distribute the provisions we have adopted in connection with this section.

The PRESIDENT (pro tempore.) The question is upon the amendment.

The ayes and nays were demanded.

The secretary called the roll and the president announced the result: Ayes, 13; nays, 18; as follows:

YEAS.

Cassell,
Estabrook,
Gibbs,
Gray,
Hascall,
Lyon,
Manderson,
Myers,
Price,
Robinson,
Stewart,
Thummel,
Vifquain.—13

NAYS.

Boyd,
Curtis,
Campbell,
Griggs,
Kilburn,
Kirkpatrick,
Lake,
Mason,
Maxwell,
Neligh,
Philpott,
Stevenson,
Sprague,
Speice,
Shaff,
Towle,
Wakeley,
Weaver.—18.

ABSENT AND NOT VOTING.

Abbott,
Ballard,
Eaton,
Granger,
Grenell,
Hinman,
Kenaston,
Majors,
McCann,
Moore,
Newsom,
Parchin,
Parker,
Reynolds,
Scofield,
Thummel,
Tisdel,
Wilson,
Woolworth.
Mr. President.—21.

The PRESIDENT (pro tempore.) The question occurs on the adoption of the section as amended.

Mr. MASON. Mr. President. I now move to strike out the section as amended, and substitute in lieu therefore the original section as reported by the committee which is the fifth section of the Illinois constitution.

The PRESIDENT (pro tempore.) Since we came out of the committee of the whole the convention has adopted the amendment striking out the principal part of this section and inserting other words. I do not think it is in order for the convention now to undo its own work and substitute the section already in its possession.

Mr. STRICKLAND. I ask for a division of the question.

The PRESIDENT (pro tempore.) Gentlemen, the motion is to strike out the section as amended.

The motion was agreed to.

Mr. MASON. Now I move to insert the original section as it is in the Illinois constitution, as follows:

Sec. 1. No state bank shall hereafter be created, nor shall the state own or be liable for any stock in any corporation, or joint stock company or association for banking purposes, now created or hereafter to be created.

No act of the legislature authorizing or creating corporations or associations with banking powers, whether of issue, deposit or discount, nor amendment thereto, shall go into effect or in any manner be in force, unless the same shall be submitted to a vote of the people at the general election next succeeding the passage of the same, and be approved by a majority of all the votes cast at such election for or against such law.

The PRESIDENT (pro tempore.) The question now recurs on the balance of the proposition, to insert.

Mr. BOYD. I wish to make a motion, if in order. To strike out the last five words, as an amendment to the motion of Judge Mason.

Mr. SPRAGUE. I hope the amendment of the gentleman from Douglas will prevail. It prevents the adoption of any banking law without a full vote.

Mr. ESTABROOK. I am of the opinion that the words are very important.

Mr. LAKE. If the gentleman desires to secure an expression of all electors it might be well to make this amendment—insert after the word "votes," in the seventh line,, the words "of all the electors voting at such election."

Mr. MASON. The more I reflect upon this subject, the better this section suits me just as it is, and for this reason. I do not think this provision ought to go from our hands until we put it beyond the possibility of a corporation or association of individuals banking to defraud either depositors or the public. I think we have done that already and having accomplished that, supposing the time should come when, in the commercial development of any locality, the circulating medium was vastly inadequate to carry on commercial transactions,—the city of Omaha, if you please. Now, there might be but a very few individuals interested in that proposition; it would scarcely be a matter of interest to be discussed throughout the state. Now, ought we to require a majority of all the votes cast throughout the state to endorse it? I think not. I read: "No state bank shall hereafter be created, nor shall the state own or be liable for any stock in any corporation, or joint stock company or association for banking purposes, now created or hereafter to be created.

No Act of the legislature authorizing or creating corporations or associations with banking powers, whether of issue, deposit or discount, nor amendment thereto, shall go into effect or in any manner be in force, unless the same shall be submitted to a vote of the people at the general election next succeeding the passage of the same, and be approved by a majority of all the votes cast at such election for or against such law."

Perhaps, Mr. Chairman, the people in some remote portion of the country would not vote upon that proposition. Now, should the commercial interest of the state be made to suffer by this failure to vote?

The PRESIDENT (pro tempore.) The question is upon the amendment of the gentleman from Douglas (Mr. Boyd), to strike out the last five words of the section (2).

The amendment was not agreed to.

The PRESIDENT (pro tempore.) The question is upon the adoption of the section.

The section was adopted.

Sec. 2. Every stockholder in a banking corporation, company or association shall be individually responsible and liable to its creditors over and above the amount of stock by him or her held, to an amount equal to twice the entire amount of his or her respective stock or shares so held, for all its liabilities accruing while he or she remains such stockholder.

Mr. ROBINSON. Mr. President. I move that all the rest of this article be stricken out.

Mr. LAKE. Mr. President. The object the gentleman desires to attain can be brought about by simply rejecting the whole of the amendment which came from the committee of the whole house and that means that the amendment reported by the committee of the whole house would simply make banking companies copartnerships. I think we might as well reject the entire article as to incorporate such a provision in it. Our constitution would contain such provisions as would prevent all persons from engaging in banking business, because no person would engage in a business where his entire property would be liable to be swept away. If doubling the amount of capital stock is not a sufficient liability then fix it higher, but don't incorporate in the constitution a provision which will prevent people from engaging in the banking business. I am more satisfied than ever that we could not have done better than to adopt the section as it came from the committee. It possesses all the safeguards necessary to protect the people; and I should now be glad to adopt the article just as it was reported from the committee.

Mr. MASON. Mr. President. All I desire is to make the depositors in a bank perfectly secure. Now, how am I going to do this? Why, by making liable all that I can make liable. I have seen no less than three savings institutions in this country holding in one case not less than $700,000 of poor people's money, broken up, and the managers retire to live in brick mansions. Now, I propose, in this amendment to make bank companies pay every dollar they owe. If Mr. "A" is a member of a banking house he ought to know something about the business of banking and the condition of his company's affairs, then the poor washerwoman who deposits her little savings with him———

Mr. TOWLE. Let me ask a question—suppose that washerwoman should own stock in the bank to the amount of $100.00, and the bank breaks, don't she lose her money, or would you protect her in this case to the extent you would if she had deposited her hundred dollars?

Mr. MASON. I will answer as the boy did the lawyer who said, "suppose I owned a horse—" "That is not a supposable case" said the boy, "you never owned a horse." (Laughter.) Washerwomen never own bank stock —or shall it be the poor depositor and the widow. I say it should be the stockholder that put in his money.—

For in either case it contemplates a loss. If somebody is to lose it ought not to be the poor depositor, but it should be the individual who put this dog into the community, cropped his ears and turned him loose—I say you may set your dog loose, but if he bites anybody you must pay for it. I have observed that money wears a little by handling and generally the man that handles it gets rich from it. I say if I set up a bank I should be liable for every dollar deposited with me. Then let us lay the fundamental law on the fundamental principles of right, truth, justice and wisdom and this is why I move this amendment.

Mr. ESTABROOK. Mr. Chairman. For my own individual self I never have had sufficient to do with money in banks to know much about this question; but this is the law, that there is one rule applying to partnerships and another to corporations. The gentleman from Otoe (Mr. Mason) says it is right to make every one in a banking corporation responsible for the acts of the whole firm. This might do in partnership but I think there should be some distinction when applied to associations. Now, in partnership each partner is supposed to be an acting member, but it is different with the corporation. It seems to me if this rule should obtain it would discourage the engaging in it. Why, it would make each member holding stock liable the same as the officers! and the individual might know that the firm was approaching bankruptcy but he could not help himself because he is governed by the rules of the association. And can he be made responsible for the acts of the officers? I think not, and hence I don't think the arguments of the gentleman from Otoe (Mr. Mason) will apply. Another thing that worries me is that this is a transcript from the constitution of the state of Illinois. That state and ours are to each other as the eagle to the humming bird. Now, it seems to me if there was any one subject thoroughly canvassed and considered in the Illinois constitutional convention it was banks and bank currency. If they were satisfied at the end of that long session with this provision, I would rather trust that decision than my own knowledge. Now, in that view of it I shall vote against every one of these amendments, and for the original section.

The PRESIDENT (pro tempore.) The question is on the motion to concur in the amendment reported by the committee of the whole. The ayes and nays are demanded, secretary, call the roll.

The vote was taken and the result announced—ayes, 22; nays, 12,—as follows:

AYES.

Campbell,
Cassell,
Curtis,
Gibbs,
Granger,
Gray,
Hascall,
Kenaston,
Kilburn,
Kirkpatrick,
Lyon,
Mason,
Myers,
Price,
Shaff,
Sprague,
Stewart,
Thummel,
Towle,
Vifquain,
Weaver,
Wilson.—22.

NAYS.

Boyd,
Estabrook,
Griggs,
Lake,
Manderson,
Neligh,
Philpott,
Reynolds,
Robinson,
Speice,
Stevenson,
Wakeley.—12.

ABSENT AND NOT VOTING.

Abbott,
Ballard,
Eaton,
Grenell,
Hinman,
Ley,
McCann,
Majors,
Maxwell,
Moore,
Newsom,
Parchin,
Parker,
Scofield,
Thomas,
Tisdel,
Woolworth,
Mr. President.—18.

So the amendment was agreed to.

The PRESIDENT (pro tempore.) The question is on the adoption of the section.

The ayes and nays were demanded.

The secretary called the roll and the president announced the result—ayes, 25; nays, 11, as follows:

YEAS.

Curtis,
Campbell,
Cassell,
Gibbs,
Granger,
Gray,
Hascall,
Kenaston,
Kilburn,
Kirkpatrick,
Lyon,
Majors,
Mason,
Maxwell,
Myers,
Price,
Robinson,
Stewart,
Sprague,
Shaff.
Thummel,
Towle,
Vifquain,
Weaver,
Wilson.—25.

NAYS.

Boyd,
Estabrook,
Griggs,
Lake,
Manderson,
Neligh,
Philpott,
Reynolds,
Speice,
Stevenson,
Wakeley.—11.

ABSENT AND NOT VOTING.

Abbott,
Ballard,
Eaton,
Grenell,
Hinman,
Ley,
Moore,
McCann,
Newsom,
Parchin,
Parker,
Scofield,
Thomas,
Tisdel,
Woolworth,
Mr. President.—16.

So the section was adopted.

The secretary read the next section, as follows:

Sec. 3. The suspension of specie payments by banking institutions on their circulation, created by the laws of this state, shall never be permitted or sanctioned.

Every banking association now, or which may hereafter be organized under the laws of this state shall make and publish a full and accurate quarterly statement of its affairs (which shall be certified to under oath by one or more of its officers) as may be provided by law.

Mr. ROBINSON. Mr. President. I move to strike out the section; these banking corporations are now subjected to the same liability as any individual doing such business, and to compel them to make these statements is to require more of them than you would of a partnership, it is subjecting them to a double liability. If three men in town would form a partnership and go into business of banking, I think it would be very unjust to give statements of their affairs, they are doing business as private individuals, and to give them none of the privileges of a corporation is wrong. I think the section ought to be struck out.

Mr. ESTABROOK. Mr. President. Herein is brought to view the distinction I suggested between the partnership and the corporation proper. Why are provisions made requiring a certificate? It is made exactly to meet objections urged by the gentleman from Otoe (Mr. Mason), that the depositors may know the condition of that institution, as well as the member of the corporation himself. It would be as reasonable to provide that every partnership, dealing in whatever commodity they may be, as to require it of the money corporations.

Mr. MASON. Mr. President. It astonishes me, it amuses me, to see the anxiety manifested to take care of capital, I never knew capital but that could take care of itself. If there is a gentleman on this floor that ever did, I would like to see him. What is this provision for? There are fifty or a hundred individuals that make up a banking association, the officers know just how the affairs of that institution stand. Now, this section requires that they shall publish just how they stand. What for? Not so much for the benefit of the depositor as for the benefit of their associates. Let us analyze this section, let us consider the practical utility of it for a single moment. We are now considering banks of issue, and I am told the only objection to this extension of liability is that nobody will bank. I undertake to say if this convention had the power to give authority to issue money, there would be not less than 999 banks in the state out of every 1000 within an hour asking to issue paper money. Why? Because out of a given circulation, the losses by shipwreck, fire and disaster, are nearly equivalent to the amount of interest we pay upon money, yet the gentlemen want to give them peculiar benefits that nobody else enjoys and then strike out this section, because, forsooth, this convention does not coincide with their views. I say this is right as it is, it makes an officer state to his associates just how the affairs of the bank stand, makes him tell to the depositors and the world just how the affairs of the bank stand. Now, sir, why do I put these banks on a different ground to any other corporation? Because to let them make the yard stick measure the cloth for the whole world, let them create the standard that measures the commodity and put that measure in the world, for this is all the circulating medium does, in that you do this, that you give them peculiar privileges that nobody else in the world enjoys, and in that you give them these privileges, you ought to exempt them from liability, and in the language of the gentleman from Indiana, who had been banking all his life, he said this is the only good act of my life, getting this liability clause through, and I believe it is so. I hope further that this section will be adopted by the committee first, for the good of the associates in banking; second, for the good of the public, for depositors; if the other proposition should be opened again, I think we will be abundantly prepared to discuss it, if it is reopened somebody is to lose; the only question is who it shall be. They say it must not be the banker because if it is he would not put his money in the banking business; I say very well gentlemen let him keep it. If any body is to lose, I say it should not be the depositor, the bill holder, the creditor, it ought to be the banker, he ought to lose to the extent of all he is worth, and that is just what we have said on this paper. So far as my judgment goes we have said the most just thing that has ever been written in any constitution, and in the language of my friend (Mr. Estabrook) who hates it so bad, it is the gem of the constitution. At certain times he is very willing to follow Illinois, except in female suffrage, and other tricks of that sort. I might be willing to follow Illinois all through. I like Illinois just so far as she holds the line of justice and right as I see it: I do not pretend to say I am always right, I desire to be. Further, officers of a bank ought to make their statements as provided for in this section, not only for the benefit of the depositors but all others, then I say to Mr. Banker, for the section endows him with peculiar privileges no other human mortal enjoys, what do you say to it? You go down here in your banking house and stamp and lithograph cases of paper that has the intrinsic value of gold, to circulate in your community, to buy bread, to measure every commodity that enters into your city, and then say to him that you shall not be liable for only what is stopped; just making it out nothing but paper, and yet you say you have not given any privileges. I tell you we have provided that the legislature may give him enormous privileges, and let me say while I favor the adoption of the balance of the article as it is, this is no new thing with me. I have been at a loss ever since I read the first line in the law, to understand the principle of a rich man that put $10,000 in a corporation and it failed for $300,000 and the loss fell upon the poor and lowly, he possessed in peace all his acquired wealth and the poor must pay to the last drop of blood and the last penny. I have always thought were it ever mine to move the institutions of the country I would put them both on a level, everything so far as the law was concerned, and it is for that reason, because I think it is right and just, that I urge the adoption of the first amendment, and I say there is a good reason why these statements should be made, individuals making up a banking association ought to know it.

Mr. ROBINSON. Mr. Chairman. This section if it has any meaning at all applies as well to banks which are not banks of issue as to banks which are, and therein, Mr. Chairman, lies the impolicy of it. If gentlemen are opposed to banks of issue they should have shown their faith by their works, voting for the amendment which proposed to prohibit banks of issue. If they be a dangerous institution let us not have them. But why indiscriminately condemn a thing which is and a thing which is not within the evil? We are told that banks are already endowed with peculiar privileges and this is given as a reason why this amendment should prevail. Now, sir, what and where are these peculiar privileges? In what do they consist? Will gentlemen point them out or give them a name? Loose declamation denouncing capital, ought not to be of any weight here. I hope, sir, that no member upon this floor has any private ends to serve or any personal spite to gratify. This section embodies all banking corporations. It makes no distinction between banks of issue and banks of deposit and discount. If banks of issue are endowed with peculiar privileges which sound policy would lead us to curtail, even while we create such banks, that furnishes no good grounds for throtling all banks, does it? The truth is, sir, this windy declamation against banks of issue and the manifold evils to which they give birth is lugged in to help out a very lame argument. It is plain that banks of issue do not breed as banks of issue the evil at which this amendment is pretended to be aimed. It is not peculiar to them. It is only in so far as banks of issue are also banks of discount and deposit, that the amendment can apply to them at all. The thin disguise can deceive nobody.

All corporations, Mr. Chairman, are no doubt privileged. To be a corporation is in itself a privilege. But have banking corporations any exclusive privileges over other corporations? Adopt this amendment of the gentleman from Otoe (Mr. Mason) and where do they stand? Subject the incorporators to the liability here recommended and what is the corporate privilege worth? Simply the power to use a seal is all that remains. True, they may sue and be sued in their corporate name. But so may a resident partnership by our statute. This is the result of the amendment. To call them a corporation under such circumstances is a mockery. It is a contradiction in terms. Their personality is gone and we have left a big unwieldy partnership—all the disadvantages with none of the advantages of incorporation.

And sir, it is even proposed to go further. It is proposed not only to amend this section two so as to subject the stockholders to individual responsibility for all the liabilities of the so-called corporation but to retain the third section and thereby compel the concern to publish quarterly a statement of its affairs to be certified to under oath, a thing that never was required, and which no men here would be stupid enough to propose to require of partnership concerns. Now, sir, what is the logical sequence of these facts? Only this and nothing more—that since partnerships are endowed with more privileges or (to speak with a stricter correctness) will be subjected to fewer disabilities than corporations, corporations will be discontinued. There is no dodging this conclusion. When you take away the limited liability of the stockholder, the privileges which remain to corporations are considerations too paltry to compensate for a quarterly statement of their affairs. With a limited liability the corporation may be insolvent, while the credit of the individual stockholder remains unimpaired. Such a statement if unfavorable does not necessarily affect him. If it did affect him, would he be likely to make it when he could avoid the necessity of so doing by dubbing the concern to which he belonged a partnership instead of a corporation? Would it be safe, Mr. Chairman, for any copartnership engaged, say in merchandise, to publish quarterly statements of their affairs? How often does it happen sir, that the enterprising merchant risks his all upon a single venture, investing all his cash and all his credit in some undertaking that promises well. Are such things to be condemned? I think not. Now a financial exhibit of his affairs at such a conjunction would be certain to ruin him. To cut the matter short, sir, this section if amended as proposed will fall still born. Enterprising men without your constitution can go into the banking business as private partnerships and by so doing dodge this desperate thrust and to a degree prevent the operation of the evil which we have created.

Mr. STRICKLAND. It seems to me this state has had experience in handling business that ought to teach valuable lessons. There were nine or more banks here at one time which issued in the aggregate, a little over a million of dollars. A good deal of it was taken into different parts of the country, and some of it was used in the construction of our Illinois railroad many miles from the place of redemption. Finally it came back, and the country was flooded with it in the hands of innocent holders unredeemed and it is impossible to estimate the amount which remains unredeemed. When my friends Generals Manderson and Estabrook say they see no difference between a bank of deposit and a bank of issue; and also between a banking corporation, I see a vast difference. A bank is in a position all the time to take advantage of the community, of the depositors, because it knows what is inside the vault and no one else does, and it is largely the creditor, the creditor of poor people who have husbanded their means and deposited them there believing in its security. The gentleman from Lancaster seems to draw the distinction between a bank of deposit and one of circulation.

Mr. ROBINSON. I did not say that.

Mr. STRICKLAND. Let us see what section three says:

"The suspension of specie payments by banking institutions on their circulation, created by the laws of the state, shall never be permitted or sanctioned.

Every banking association now, or which may hereafter be organized under the laws of this state shall make and publish a full and accurate quarterly statement of its affairs (which shall be certified to under oath by one or more of its officers) as may be provided by law."

There would be no necessity for such restrictions being applied to a bank of deposit that never issued a dollar. It could never apply to them, because they would have nothing to redeem.

Mr. MANDERSON. Suppose I had deposited with a bank that was a bank of deposit and exchange $10,000 in gold, and would go and demand my specie, and they offered me paper on some other state bank, would it not apply to them?

Mr. STRICKLAND. It would not apply, because where it is not a bank of issue it would give you a certificate descriptive of the kind of funds you were to receive.

Mr. MANDERSON. They could pay you in any thing that was legal tender and nothing else.

Mr. STRICKLAND. A bank always gives that kind of a certificate representative of the kind of payment they will make. In relation to banks making an exhibit, if a bank of issue, it should make an exhibit when most other concerns, except insurance companies or fire companies, ought not to make any report for the information of those concerned, in giving credit to the issue. It was customary with those wild-cat banks, we had, to trade in other stocks. One of these banks collapsed because it suddenly bought an immense amount of stock of another irresponsible corporation. The stock depreciated and did not represent ten cents on the dollar, and one individual who invested in such stocks by a trade of the bank stocks for it made the money by speculation out of the enterprise, and thereby became the scape-goat for the bank, and it never paid a dollar and closed its doors. If the banks had been compelled to make an exhibit and publish a statement the people would have seen this, and there would have been a rush on the bank the next day after it was known the officers of the bank had engaged in so reckless a speculation. I think there is no law on the statute books of any state that is too stringent in respect to banks of circulation for the proper protection of the bill holder and depositor.

Mr. ESTABROOK. I would ask my old democratic friend whether he will make a motion to strike out the whole provision, and I will second it. It will be following our old democratic instincts. I am opposed to state banks.

Mr. STRICKLAND. I am opposed to the whole scheme, but if you have them I am in favor of having these restrictions around them.

Mr. MYERS. It is certainly a very dangerous power and one which all experience of the past has discarded, that of chartering state banks, with power to issue paper money as a circulating medium. Our state banking system has gone out of fashion, and without, too, all of the injustice inflicted upon the people under its operation. These state banks were admitted to be a great injury to all departments of industry, in inflating and depressing the markets just as suited the selfish and grasping interests of the class of financiers by whom they were managed. The laboring classes, more than any other, because less able to bear loss, than the wealthy capitalists, were the chief sufferers under the old system. Bank notes from distant points, of unknown banks, from unknown places, were more largely circulated than the notes of the local bank at the place of location. The working class were necessarily paid for their labor in this depreciated paper, for the full value on its face, when the baker, the grocer, the miller, to save themselves from loss, were compelled to share to the amount below par,—often five to ten per cent. The experience of the people of the United States is against a return to the state bank system. It has been weighed in the balance and found wanting and was only tolerated until a more perfect and less oppressive system could be devised. A number of powerful institutions were chartered by the older states, to act as regulators of the currency, one with a capital of $30,000,000, to continue in operation for thirty years, under the control of Mr. Nicholas Biddle, then considered the best financier in the United States. Yet in a period of two years, the entire capital disappeared and much of its worthless paper remained in the hands of the public. This bank caused a suspension of specie payments throughout the country and crippled every branch of industry in the country, requiring years for the recovery of confidence and the repair of the damage. Its speedy fall suggested the couplet—

> "If I was so soon done for,
> Wonder why I was begun for."

At a later period followed Joe Allibone's Bank of Pennsylvania, an institution which basked in the confidence of the whole country, which contained in its charter the full extent of the individual liability clause, yet it sunk never to have a resurrection. Mr. Allibone fled to Europe on the eve of the bankruptcy of the institution, and the loss fell heavily upon the stockholders, reducing many of them from affluence and comfort to poverty and misery. When the president fled, he sent the key to the vault of the bank, with a note that there was money enough in it, gold and silver, to redeem the circulation, but on opening the massive doors no coin of any kind was found —nothing but worthless securities. It was non est inventus. Now, Sir, I pretend to say that all attempts to secure the people against loss in this way, have in every instance, proved a failure. Stringent provisions for the security of the bill-holder against loss direct and depreciation generally, have been of very little avail in cases of bankruptcy and suspensions of specie payments. I have nothing to say against private bankers doing legitimate business under the laws of the state of Nebraska. When managed by honest and conscientious men, and I know nothing to the contrary, they are of local benefit and aids to local traffic. To establish state banks of issue at this enlightened day would be a blunder, worse than crime. I do not believe the legislature would do any such thing. There is no necessity for doing it, either now or at any future time. Greenbacks are good enough for me for the redemption of every dollar for which the faith of the United States is pledged. One of these issued by a bank in Boston is good on the St. Lawrence, good in Texas, on the Rio Grande, good on the Pacific, and par on the golden shores of California. That comes up to the modern standard of a sound convertible currency, free from depreciation in any respect, and so well balanced that inflation of the circulation and sudden contraction on the part of bankers and brokers can never be practiced. Trade and commerce are no longer at the mercy of speculators, and monopolists, and bread stuffs find steady prices as regulated solely by the law of supply and demand. The National banking system is well founded upon actual securities for every dollar issued, and in amount sufficient to supply the whole country with a uniform circulating medium, worthy of a great, wealthy and prosperous country. I hope to see the present system continued as long as we need paper money, to the total exclusion of state banks of issue. On that principle I am ready to stand or fall, and I am assured the people will never consent to go back to the old, rotten system of state banking under any pretense whatever, and that, when the national system expires by its present limitation, some 13 years yet, millions of voices will be raised by the loyal people for the continuance of the system which has served the country in time of war like an army with banners of freedom two hundred thousand strong, and in time of peace has so well answered the needs of the whole country north, south, east and west. Uncle Sam has provided us with a currency, and the faith of the whole country is pledged to make it good. When have we had a currency that will at all compare with it in its power—in its value to this money of Uncle Sams? Under the old banking system, thousands and thousands of dollars were scattered throughout the country, which were afterwards worth no more than so much blank paper. There is the warning voice of experience. Le us not forget the old adage, that "the burnt child dreads the fire." Let us not commit an injury to our neighbors, our friends and our children.

The PRESIDENT (pro tem.) The question is upon the motion to strike out section three.

The motion was not agreed to.

Adjournment.

Mr. MYERS. Mr. President. I move we adjourn.

Mr. BOYD. Mr. President. I move to amend by adjourning until 8 o'clock this evening.

The PRESIDENT (pro tempore.) The question is upon the motion to adjourn.

The convention divided, and the motion was not agreed.

The PRESIDENT (pro tempore.) The question is upon the motion to adjourn until eight o'clock this evening.

The convention divided and the motion was not agreed to.

Banks and Currency Article.

Mr. MAXWELL. Mr. President. I move to amend section three by inserting the words, "bank of issue", in the third line, and strike out the words "banking association."

The amendment was not agreed to.

Adjournment Again.

Mr. GIBBS. Mr. President. I move we adjourn until half past seven this evening.

The convention divided and the motion was not agreed to.

Mr. BOYD. Mr. President. I move we adjourn.

The yeas and nays being demanded the secretary proceeded to call the roll.

The President pro tempore announced the result—yeas, 15, nays, 20, as follows:

YEAS.

Boyd,
Estabrook,
Griggs,
Hascall,
Lake,
Majors,
Maxwell,
Myers,
Neligh,
Philpott,
Price,
Robinson,
Speice,
Wakeley,
Wilson,—15.

NAYS.

Campbell,
Cassell,
Gibbs,
Granger,
Gray,
Kilburn,
Kirkpatrick,
Lyon,
Mason,
Manderson,
Reynolds,
Stevenson,
Stewart,
Sprague,
Shaff,
Thummel,
Towle,
Vifquain,
Weaver,
Woolworth,—20.

ABSENT AND NOT VOTING.

Abbott,
Ballard,
Eaton,
Grenell,
Hinman,
Kenaston,
Ley,
McCann,
Moore,
Newsom,
Parchin,
Parker,
Scofield,
Thomas,
Tisdel,
Woolworth,
Mr. President.

So the motion to adjourn was not agreed to.

Mr. STRICKLAND. I would suggest that we can finish up this bill before we go. I voted against the amendment but I will move a reconsideration in order to satisfy the gentleman from Cass (Mr. Maxwell) of the vote by which the amendment offered by him was lost to strike out "banking associations" and insert "banks of issue."

The PRESIDENT (pro tem.) The question is upon the motion to reconsider.

The committee divided and the motion was not agreed to.

Mr. TOWLE. Mr. President. I move the adoption of the section.

Section three was adopted.

The secretary read the next section, as follows:

Sec. 4. If a general banking law shall be enacted it shall provide for the registry and countersigning by an officer of the state, of all bills or paper credits designed to circulate as money, and require security to the full amount thereof, to be deposited with the treasurer, in United States or Nebraska state bonds, to be rated at ten per cent. below their par value; and in case of a depreciation of said bonds to the amount of ten per cent. below par, the bank or banks owning said stock or bonds shall be required to make up said deficiency by depositing additional stocks or bonds; and said law shall also provide for he recording of the names of all stockholders in such corporations, the amount of stock held by each, the time of any transfer thereof, and to whom such transfer is made.

Section four was adopted.

Mr. STRICKLAND. I move that the article be read a second and third time by its title and be ordered engrossed.

The motion was agreed to.

Mr. STEVENSON. I move that we make the question of suffrage the special order for this evening at eight o'clock.

Mr. KIRKPATRICK. Mr. President. I think we have worked here long enough today—ten hours—and I object to a night session.

Mr. HASCALL. I move we adjourn.

The committee divided and the motion was agreed to.

So the convention (at six o'clock and thirty-eight minutes) adjourned.

THIRTY-NINTH DAY.

Wednesday, August 9, 1871.

The convention met at eight o'clock and was called to order by the president.

Prayer.

Prayer was offered by the chaplain as follows:

Our Father, help us today that we may walk in light, may we shun all doubtful roads, may we find everlasting principle. May we desire to do all our work and may Thy blessing rest upon us, that mindful of earth, hopeful of heaven, true to each other and true to God that our lives may not be in vain. Amen.

Leave of Absence.

Mr. STEWART. Mr. President. I ask leave of absence for Mr. Campbell, whose child is sick.

Leave was granted.

Report From Engrossment Committee.

Mr. REYNOLDS. Mr. President. Your committee of engrossment and enrollment, to whom was referred the article on Counties; the article on Military Affairs, and the article on Township and Precinct Organization, beg leave to report the same, and find them correctly engrossed.

Counties.

The PRESIDENT. We will take up the bill in relation to counties. This bill is upon its third reading and passage. The secretary will read.

The secretary read, as follows:

ARTICLE——

Section. 1. No county shall be formed or established by the legislature which will reduce the county or counties, or either of them, from which shall be taken to a less area than 400 square miles; nor shall any county be formed of a less area.

Sec. 2 No county shall be divided, or have any part stricken therefrom without first submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county voting on the question shall vote for the same; Provided, that the legislature may divide any county whose area exceeds 900 square miles, without submitting the question to a vote of the people.

Sec. 3. There shall be no territory stricken from any organized county unless a majority of the voters living on such territory shall petition for such division; and no territory shall be added to any organized county without the consent of the majority of the voters of the county to which it is proposed to be added. But the portion so stricken off and added to another county, or formed in whole or in part into a new county, shall be holden for and obliged to pay its proportion of the indebtedness of the county from which it has been taken.

Sec. 4. No county seat shall be removed until two-thirds of the voters of the county to be ascertained in such manner as shall be provided by general law, shall have voted in favor of its removal to some other one point. The question of the removal of a county seat shall not be oftener submitted than once in six years; provided, that when an attempt is made to remove a county seat to a point ten miles in a direct line nearer the center of the county, then a majority vote only shall be necessary, and the question of removal may be submitted once in four years.

Sec. 5. The legislature shall provide by law for the election of such county and township officers as may be necessary.

The PRESIDENT. This is the third reading of the bill. The question is on its passage. As many as are in favor will, as your names are called, answer "aye," those opposed "no."

The secretary called the roll.

Mr. MYERS (before the vote was announced.) Mr. President. I voted "aye." I ask leave to change my vote. I am opposed to changing county seats, every four years. They ought to be permanent as the rivers.

The President announced the result—ayes, 29; nays, 4; as follows:

YEAS.

Abbott,
Boyd,
Cassell,
Eaton,
Granger,
Gray,
Griggs,
Hascall,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
McCann,
Majors,
Manderson,
Maxwell,
Neligh,
Newsom,
Price,
Reynolds,
Shaff,
Sprague,
Speice,
Stewart,
Thummel,
Towle,
Vifquain,
Weaver,
Wilson.—29.

NAYS.

Gibbs,
Lyon,
Myers,
Thomas.—4.

ABSENT AND NOT VOTING.

Ballard,
Campbell,
Curtis,
Estabrook,
Grenell,
Hinman,
Ley,
Mason,
Moore,
Parchin,
Parker,
Philpott,
Robinson,
Scofield,
Stevenson,
Tisdel,
Wakeley,
Woolworth,
Mr. President.—19.

The title was agreed to and the report was referred to the committee on revision and adjustment.

The Military Bill.

The PRESIDENT. The secretary will read the Military Bill.

The secretary read, as follows:

ARTICLE——

Section 1. The legislature shall determine by law what persons shall constitute a militia of the state, and provide laws for the organization and disciplining of the same.

The PRESIDENT. The question is on the passage of the bill. As many as are in favor will, as their names are called, answer "aye," those opposed, "no." Mr. Secretary call the roll.

The secretary called the roll.

The President announced the result—ayes, 34; nays, 1; as follows:

YEAS.

Abbott,
Boyd,
Cassell,
Eaton,
Estabrook,
Gibbs,
Granger,
Gray,
Griggs,,
Hascall,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Lyon,
McCann,
Majors,
Manderson,
Maxwell,
Myers,
Neligh,
Newsom,
Price,
Reynolds,
Shaff,
Sprague,
Speice,
Stevenson,
Stewart,
Thummel,
Thomas,
Towle,
Weaver,
Wilson.—34.

NAYS.

Vifquain.—1.

ABSENT AND NOT VOTING.

Ballard,
Campbell,
Curtis,
Grenell,
Hinman,
Ley,
Mason,
Moore,
Parchin,
Parker,
Philpott,
Robinson,
Scofield,
Tisdel,
Wakeley,
Woolworth,
Mr. President.—17.

The PRESIDENT. Shall the title be agreed to.

The title was agreed to.

The PRESIDENT. The article will be referred to the committee on revision and adjustment, if there is no objection. So referred.

Township Organization Again.

The secretary will read the article on township organization.

The secretary read, as follows:

ARTICLE——

Sec. 1. The legislature, shall provide by general law for township organization, under which any county may organize whenever a majority of the legal voters of such county voting at any general election shall so determine; and whenever any county shall adopt township organization, so much of this constitution as provides for the management of the fiscal concerns of said county by the board of county commissioners, may be dispensed with, and the affairs of said county may be transacted in such manner as the legislature may provide; and in any county that shall adopt township organization the question of continuing the same may be submitted to a vote of the electors of such county at a general election, in a manner that shall hereafter be provided by the legislature, and if a majority of all the votes cast upon that question shall be against township organization, then such organization shall cease in said county, and all laws in force in relation to counties not having township organization, shall immediately take effect and be in force in such county. No two townships in any one county shall have the same name, and the day of holding the annual township meeting shall be uniform throughout the state.

Sec. 2. There shall be elected in each of the counties in this state three officers, who shall be styled The Board of County Commissioners, whose term of office shall be three years, and who shall hold sessions for the transaction of county business as shall be prescribed by law; provided, that the county commissioners now elect in the several counties of the state hold their office for the term for which they were elected.

The PRESIDENT. This is the third reading of the article. The question is upon its passage.

The secretary proceeded to call the roll.

The President announced the result,—ayes, 36; nays, 1,—as follows:

YEAS.

Abbott,
Boyd,
Curtis,
Cassell,
Eaton,
Estabrook,
Gibbs,
Granger,
Gray,
Griggs,
Hascall,
Kenaston.
Kilburn,
Kirkpatrick.
Lake,
Lyon,
Majors,
Mason,
Manderson,
Maxwell,
Myers,
McCann,
Philpott,
Price,
Reynolds,
Stevenson,
Stewart,
Sprague,
Speice,
Shaff,
Thomas,
Thummel,
Towle,
Weaver,
Vifquain,
Wilson,—36.

NAYS.

Neligh.—1.

ABSENT OR NOT VOTING.

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Moore,
Newsom,
Parchin,
Parker,
Robinson,
Scofield,
Tisdel,
Wakeley,
Woolworth,
Mr. President.—15.

So the article passed.

The PRESIDENT. Shall the title be agreed to?

The title was agreed to.

The PRESIDENT. The article will be referred to the committee on revision and adjustment, if there is no objection. So referred.

Mr. MASON. Mr. President. I present the report of the special committee to whom was referred the communications and resolutions on the question of temperance. I move that a thousand copies of the report be printed and that the article be submitted separately, and one hundred copies be ordered printed.

The PRESIDENT. It will be done unless objection is made.

Report of Special Committee on Liquor Traffic.

To the Honorable the President and Members of the Constitutional Convention of the State of Nebraska.

Your committee, to whom has been referred the various petitions relating to the liquor traffic, respectfully report—

That the question is one which has demanded and received the attention of statesmen, legislators, and philanthropists of all ages, and all civilized nations, by whom various expedients have been devised, with the purpose of directing, controlling, or repressing the manufacture of, traffic in, or use as a beverage of intoxicating drinks. Among these expedients we may name that of King Ahasuerus (Esther, 1-8), conferring the largest liberty as to their use, and that of Jonadab (Jeremiah, 35), not only inhibiting such use, but making it impossible, by forbidding the planting of the vine, as placing before us the two extremes, between which lie all the legislation on this subject, both of ancient and modern times.

In the states of the American Union the liquor laws seem to be reducible to three classes, viz:

First. Licensing the traffic for revenue purposes.

Second. The inhibition of the manufacture, sale, and use of intoxicating drinks. And

Third. Giving the question to the people of counties, precincts, cities, or towns to decide.

The license system has been fully tried in all the states of the union, and under it large revenues have been derived by the states; but at a fearful cost to the people, and especially to those classes of people which are least qualified to bear the immense burden imposed upon them by this licensed traffic. This may be illustrated by a few carefully gathered and thoroughly reliable statistics, which are presented for the consideration of this convention.

The report of U. S. Commissioner Wells, showing the aggregate sales of liquors at retail in the several States and Territories of the Union, for the fiscal year ending June 30, 1867, as deduced from the receipts of the internal revenue, gives the amount of retail sales for a single year at the astounding sum of $1,483,491,865. This is the cost to the people of these beverages. (His report of sales at retail in Nebraska for the same year is $3,290,515.) this leaves out of view the amount paid out for liquors by the large class of consumers who purchase for their own use of the wholesale dealers.

This fearful total will be better understood by dividing it among the entire states and territories, showing the average cost to every man, woman and child in the nation to be forty-three dollars per year, directly expended for intoxicating drinks.

To further illustrate, by comparison, in annual cost of the liquor consumed, the following table has been prepared, in which the total value of the railroads in four of the principal states, namely, Connecticut, New York, Pennsylvania, and Ohio, is placed side by side with the sums expended in the same states for liquors in the year ending June 30, 1867:

STATES	Retail liquor sales for one year........	Total value of Railroads and their equipments.
Connecticut	$ 35,001 230	$ 24,997 741
New York............	246,607 520	189,308 180
Pennsylvania..........	152,663 495	221,847 854
Ohio..................	151.734 875	149,540 950
Total..........	$586.007 120	$585,694 725

Carrying out this comparison through the whole of the states does not materially affect the result—the full statistics for the whole union showing an expenditure of $1,483,491,865 for liquors at retail, against $1,654,050,779, the total value of all the railroads in the United States, with their entire equipments.

Astounding as these figures are, those representing the cost of the liquor traffic must be very greatly increased that they may convey an idea of the financial side of the question, for to the traffic in intoxicating drinks is justly chargeable its criminal results.

The most carefully prepared and most reliable statistics show that from three-fourths to four-fifths of all the crime in the United States is directly traceable to the traffic in or use of intoxicating drinks. In our sister state of Iowa, according to the report of the secretary of state for the year 1867, the number of criminal convictions was 766, of which 464, or about three-fifths, were classed as "saloon keepers," "gambling hell keepers," and "nuisances," and more than half of them foreign born. Statistics, further, show that the cost to the people of the arrests, imprisonment, trial, conviction, and punishment of criminals convicted of crime, chargeable to the traffic, presents an aggregate as large, if not larger, than the amount paid for liquors at retail; or in other words, would increase the cost, direct and indirect, to three thousand million of dollars per annum!—a sum greater than the entire national debt at the close of the late rebellion.

And to this might very properly be added the cost of all pauperism resulting from drunkenness, the expense of maintaining multitudes of insane; rendered so by the same agency; the value of time consumed in drinking places, the money, and time lost in gambling and squandered in houses of ill fame, (usually connnected directly or remotely with drinking saloons) and the other results which cannot be estimated in dollars and cents, such as 60,000 deaths in the United States from drunkenness every year; 100,000 families dragging out a weary life in the depths of poverty, and sinking into degredation, ignorance and vice; and more than 200,000 children sent annually to be sustained in poor houses and by charitable institutions.

These statistics very clearly show that the theory which holds private vices to be public blessings, is a fallacy, and that the licensing of the sale of intoxicating drinks for revenue purposes, grossly fails of its ostensible object. For every dollar paid in as revenue from this source, five dollars must be paid out to meet its consequences.

To one feature of the license law of our state we would call special attention. In a community of one hundred or five hundred families, as the case may be, the County Commissioners may, upon the petition of ten freeholders grant a license, even though all other citizens oppose the introduction among them of this debasing and corrupting engine of misery and death. The seductive temptation may thus be forced upon the youth of that community; the seeds of pauperism and crime be broadly sown, ignorance, idleness and vice be encouraged, and the people who, under a republican government are supposed to have some rights, are forced to succumb to the saloon keeper, his abetting freeholders and the Commissioners who have forced this evil upon them according to law. These things ought not so to be.

Turning from the system of licensing the traffic to that of its entire inhibition, we find that its results have in those states which have tried it, been uniformly satisfactory and successful whenever it has met the approval and been sustained by the votes of a majority of the people. The number of arrests for violations of the law and disturbances of the peace, have been reduced fully one-half; murder, arson, robbery, and other kindred crimes, have decreased in like proportion; while pauperism and other evils of like character have in proportionate ratio disappeared, and on the other hand, religion and education have prospered and laid the foundations of such institutions as are the true glory of our republic, and are designed to lead the feet of our youth into the paths of wisdom "whose ways are ways of pleasantness and all her paths are peace."

Had your committee the evidence that a prohibitory liquor law would be sustained by the vote of a majority of the legal voters of the state, they would earnestly recommend to this convention the adoption of the inhibitory principle as a part of the fundamental law of the state, knowing as we do, that such a law would be hailed by thousands of our people with gratitude and joy, but not having this evidence before us, and realizing that such a law unsanctioned by the people might be productive of evil and not good, and intensify the evil it was designed to cure, we must look still further for a remedy.

The following resolutions which embody the plan of treatment of this subject, which we believe to be safe and prudent for the state, just to the people and protection to their rights, and which in our opinion, will be sustained by a great majority of the people, we present as an expression of our convictions, and respectfully recommend that the same be submitted as a distinct and separate proposition for adoption or rejection by the people:

ARTICLE——

"Section 1. The legislature shall

provide by law for submitting to the legal voters of each county in the state the question of "inhibition" or "license," and in those counties in which a majority of the votes cast are in favor of inhibition, the sale of intoxicating beverages of every description shall be inhibited.

Sec. 2. The legislature shall further provide that in any county in which a majority of the votes cast shall be in favor of license, on the petition of ten freeholders who are legal voters, the question of "inhibition" and of "license" shall be submitted to the legal voters of any city, town, precinct or township in the state, and in any city, town, precinct or township in which a majority of the votes cast are in favor of inhibition, the sale of intoxicating beverages of every description shall be inhibited.

Sec. 3. The legislature shall further provide that in those counties, cities, towns, precincts and townships in which a majority of all the votes cast are in favor of license, upon the petition of ten freeholders who are legal voters, license for the sale of alcoholic, vinous or malt liquors may be granted on the payment into the treasury of the state for the use of the Insane Asylum, of not less than one hundred dollars every three months, and the bond of the applicant for license with the aforesaid ten freeholders, who have petitioned for such license, making him and them jointly and severally responsible for all injury done to life, person or property, whether of the state, county, city, town, precinct, township or individual, which can be shown to have been committed by any person or persons in a state of intoxication, who have procured the intoxicating beverage by purchase, donation or otherwise from the person or persons so licensed, and the legislature shall further provide for the proper punishment by fine or imprisonment or both, of those who sell or give away alcoholic, vinous or malt beverages without such license.

O. P. MASON, Chairman.

Legislative.

Mr. MYERS. Mr. President. I move that the convention take up the amended report of the legislative committee.

The motion was agreed to.

The secretary read the first section, as follows:

Section. 1. The legislative authority shall be vested in a senate and house of representatives.

The first section was adopted.

The secretary read the next section, as follows:

Sec. 2. The enacting clause of all bills shall be: "Be it enacted by the Legislature of the State of Nebraska," and no law shall be enacted except by bill. No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the legislature; and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered upon the journal.

The second section was adopted.

The secretary read the next section, as follows:

Sec. 3. The legislature shall provide by law for an enumeration of the inhabitants of the state in the year 1872, and at the end of every two years thereafter until after the year 1880, when it shall provide for an enumeration in the year 1885, and every ten years thereafter; and at their first annual session after such enumerations, and also after each enumeration made by the authority of the United States, but at no other time, the legislature shall apportion the senators and representatives according to the number of inhabitants, excluding Indians not taxed and soldiers and officers of the United States army and navy: Provided, however, that the legislature, in making such apportionment, shall apportion to counties containing three-fifths of the ratio one representative, and all counties having a surplus of three-fifths of the ratio shall be entitled to one additional representative.

Mr. NELIGH. Mr. President. It seems to me that the word "annual," in the fourth line ought to be stricken out.

I move it be stricken out.

The motion was agreed to.

Mr. GRAY. Mr. President. I move to insert the word "general" in the place of the word just stricken out.

The PRESIDENT. The question is upon inserting the word "general."

Mr. BOYD. I move an amendment to that, to insert the word "regular."

The amendment of the gentleman from Douglas (Mr. Boyd) was agreed to.

Mr. BOYD. Mr. President. I move to strike out the word "shall" in the fifth line and insert the word "may."

Mr. GRIGGS. Mr. President. I hope that will not prevail. I want it left in such a way that the legislature shall apportion after each taking of the enumeration. They may not have to change the apportionment at each time.

The PRESIDENT. The question is on striking out the word "shall" and inserting "may".

The amendment was not agreed to.

The PRESIDENT. The question is on the adoption of the section as amended.

Section three was adopted.

The secretary read the next section, as follows:

ELECTION OF SENATORS.

Sec. 4. Every county having three-fifths of the number of inhabitants allowed for a senator shall be entitled to one senator; counties having one or more senators shall be allowed one senator for an excess of three-fifths of the number of inhabitants allowed for a senator; a county having the number of inhabitants allowed for a senator, or three-fifths of that number shall be a senatorial district; two or more counties, not having three-fifths of such number, shall be included in senatorial districts, and be allowed one senator for each of such districts,—such districts to be comprised of contiguous counties, and as near as practicable of equal population.

Mr. WEAVER. Mr. President. I move to strike out all after the word "district," in fifth line.

If there is any idea in this then it is very bad one, just look at it, "two or more counties, not having three-fifths of such number," then what number will entitle them to a representative? It certainly don't mean one-fifth. If we should make it two or more counties having three-fifths, it would be proper.

Mr. GRAY. Mr. President. It seems to me these words are plain enough. Every county having three-fifths of the ratio shall be entitled to one senator. Now then what are we to do with those counties having less than three-fifths of the ratio? It is provided that two or more of them shall be grouped together in senatorial districts and give them a senator.

Mr. WEAVER. I will withdraw my motion to strike out, if the gentleman will amend by striking out the word "not."

Mr. GRAY. I will illustrate this, for I think it is misunderstood. Take the county of Burt and the county of Cuming, we will say that neither of them have three-fifths of the ratio. Each one may have one-half, they will when put together make one senatorial district.

Mr. STEVENSON. Mr. President. I move to amend by striking out the word "not" in fifth line and insert the words "taken together."

Mr. HASCALL. Mr. President. I move to insert after the word "district" in fifth line, the words "a county not having the requisite population for a senatorial district shall be joined with like counties and made a senatorial district, the population to correspond with the population in other districts."

Mr. TOWLE. Mr. President. I am in favor of the section as it now stands, but as the amendment of the gentleman from Douglas (Mr. Hascall) expresses the same ideas in plain terms, I shall favor it.

Mr. BOYD. Mr. President. I am in favor of the amendment of Mr. Hascall, but believe there is a provision in the constitution of Illinois still better, I therefore move the following as a substitute for his amendment:

"If any county has less than three-fifths of the ratio, it shall be attached to the adjoining county or counties having the least population, to which no other county or counties have for the same reason been attached, and the said counties shall constitute a separate district."

Mr. HASCALL. I will accept the substitute of my colleague (Mr. Boyd.)

Mr. CASSELL. Mr. President. I hope none of these amendments will prevail, I think the section is correct as it is.

Mr. GRAY. Mr. President. I have carefully looked over this fifth line, and I am satisfied it is all right; and for my part I shall oppose the amendment.

Mr. WEAVER. I have no doubt the gentleman feels considerably bolstered up by having a few others express themselves in his favor, but this does not mean what the gentleman from Dodge thinks it does. I ask any gentleman, if they wish to make a provision by which two or more counties, not having three-fifths of the ratio shall be entitled to a senatorial representation, what language they would use different to that employed here? Any of these amendments will cure this defect. This word "two" limits counties. If the word "either" came in then it would contain the idea of the gentleman from Dodge, the gentleman trying to press this language upon us. There is much difference between a negative and affirmative sentence. The one offered by the gentleman from Douglas is affirmative. This is negative. If this goes as it is, it will be a bungling way of expressing anything.

Mr. LAKE. The language used in the section now under consideration is most clearly susceptible of different construction, as has been demonstrated upon this floor. It is couched in language which ought not to be found in the constitution. The gentleman from Dodge (Mr. Gray) himself, at one time, is inclined to think that there is nothing objectionable in the language used; at another moment he takes courage, and thinks it is well enough. But language susceptible of so many constructions ought not to find a place in a constitutional provision. Now, either one of the amendments which have been offered, with the exception, perhaps, of one, would make the provision clear, and uncertain. I think, however, that the language which is used connot convey to any mind the meaning which it is desired, by the majority of this convention that the section should convey. It is desired to convey the idea that counties having a population less than three-fifths of the ratio of representatives may be grouped together, or that, taken together, they shall have a population of at least three-fifths of the representation. Now to my mind, this language conveys no such idea; on the contrary, it conveys the idea that two or more counties taken together, not having three-fifths of the ratio shall be entitled to a senator. That is the language plainly and clearly expressed. "Two or more counties not having." What is it "not having?" Why, the two or more counties. No matter how many there may be. "Not having three-fifths of the ratio shall be entitled to a senatorial representative." Most certainly, if any language has meaning at all, this language has that meaning. And a district composed of counties which, taken together, might not have more than one-half of the ratio of representation, would be entitled to be represented in the senate under this language. I presume no legislature would be guilty of making such apportionment. But it might be done under this provision. Now, while we are considering this section is it not best to clothe this idea in language which shall be unmistakable? And it seems to me that the amendment offered by my colleague, taken from the Illinois constitution, is unambiguous; is certain; is definite; will admit of no two constructions; and therefore ought to be adopted. The amendment offered by my colleague Mr. Hascall, obviates the difficulty, but I am inclined to think that the language, gotten up on the spur of the moment, is not quite apropos as that of my colleague Mr. Boyd, and therefore I prefer the amendment of the latter. Let us make this, Mr. President, so that there shall be no equivocal language, susceptible of two or more constructions so entirely different from each other. A constitutional provision should be certain; should be so definite as to admit of no two constructions; the language used should convey the very idea and none other, that the convention intends it shall convey. I am in favor of the amendment offered by my colleague, Mr. Boyd, because I think it is certain and clear.

Mr. HASCALL. I will not accept the amendment.

Mr. GRAY. I would suggest to the mover that he leave in this section the last clause, "such district to be comprised of contiguous counties, and as soon as practicable of equal population."

The secretary read the amendment as follows:

"To strike out after the word "district" in the fifth line, up to the word "such," in the sixth line and insert the words "a county not having the requisite population for a senatorial district shall be joined with like counties to make a senatorial district, the population to correspond with the population in other districts."

The committee divided and the amendment was agreed to.

Mr. LAKE. Mr. President. The difficulty under which we seem to labor, might have been obviated, I think, much easier than we have obviated it, and left the section stand almost intact. If we had inserted, after the word "county," in the fifth line the words "or districts," the section, taken altogether, would have been clear enough. The language was somewhat objectionable. The words "two or more," in the fifth line might have been made much more symmetrical, than we now have it.

Mr. HASCALL. Mr. President. I admit that the language of this section is not as good as it might be; but the committee on revision and adjustment can arrange that. I think that we will have but little work for our committee on "phraseology" to do, and they will feel slighted if we do not give them something to do.

The PRESIDENT. The question is upon the adoption of section four.

The section was adopted.

Mr. HASCALL. Mr. President. I see that in printing this bill, the section which should be section five is marked section twenty. I call attention to that fact, Mr. President. It should have had a heading "election representative districts," and should have come in right after "election of senators." I move we take the section up.

Mr. WEAVER. Mr. President. I see no reason for pottering around in this way. Why not take the sections up as they occur?

Mr. MYERS. Mr. President. Many of these transpositions have been made in copying; they are not intentional, either on the part of the printer or the secretary. Each section was written on a separate page. This is business for the committee on revision and adjustment.

The PRESIDENT. The question is upon the motion to take up section twenty next.

The motion was not agreed to.

The secretary read the next section, as follows:

Sec. 5. The first house of representatives under this constitution shall consist of fifty-seven members, who shall be chosen for one year, until the year 1873; after that year the members of the house of representatives shall be chosen for two years.

The first senate shall consist of nineteen members, who shall be chosen for two years. After the first election, the number of senators and members of the house of representatives shall be regulated by law, but shall never exceed one hundred representatives and thirty-three senators.

Mr. WILSON. Mr. President. I move to strike out, in the first line, the words "fifty-seven" and insert the words "sixty-six," and to strike out the word "nineteen," in the fourth line, and insert the words "twenty-two."

Mr. NEWSOM. Mr. President. I move to strike out the word "fifty-seven," in the first line and insert "forty-five," and to strike out "nineteen," in the fourth line, and insert "fifteen," and after the word "law" in the sixth line and insert the following: "Allowing an increase of representatives and senators as the population of the state increases on the ratio which upon the present population gives fifteen senators and forty-five representatives.

Mr. WEAVER. Mr. President. under that in less than two years with our present increase of population, we shall have the whole number, and no chance for any further increase.

Mr. NEWSOM. I will withdraw the latter part of my amendment.

The PRESIDENT (pro tem.) The question is upon the amendment to strike out fifty-seven and insert forty-five, and to strike out nineteen and insert fifteen.

The ayes and nays are demanded, secretary call the roll.

The vote was taken and the vote was announced—ayes, 9; nays, 31,—as follows:

AYES.

Boyd,
Eaton,
Gibbs,
Lyon,
Mason,
Maxwell,
Newsom,
Thomas,
Vifquain.—9.

NAYS.

Abbott,
Curtis,
Cassell,
Estabrook,
Granger,
Gray,
Griggs,
Hascall,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Majors,
Manderson,
Myers,
McCann,
Neligh,
Philpott,
Price,
Reynolds,
Robinson,
Stevenson,
Stewart,
Sprague,
Speice,
Shaff,
Towle,
Thummel,
Wakeley,
Weaver,
Wilson.—31.

ABSENT AND NOT VOTING.

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Moore,
Parchin,
Parker,
Scofield,
Tisdel,
Woolworth,
Mr. President.—12.

So the amendment was not agreed to.

Mr. TOWLE. Mr. President. I desire to offer another amendment.

The secretary read the amendment as follows:

"To amend by striking out 66 and substituting 63. Striking out 22 and inserting 21."

Mr. MAXWELL. Mr. President. This is in fact a motion to "strike out," and "insert." Now I call for a division of the question.

The PRESIDENT pro tem. A division is called for and the question is now on striking out fifty- seven and nineteen.

Mr. TOWLE. Mr. President I move a division of the question.

The PRESIDENT pro tem. The question is on striking out "fifty-seven" in first line and inserting "Sixty-three."

The ayes and nays were demanded.

The secretary called the roll and the president announced the result—yeas, 17; nays, 24, as follows:

YEAS.

Abbott,
Griggs,
Kilburn,
Mason,
Neligh,
Robinson,
Shaff,
Speice,
Stevenson,
Thummel
Thomas,
Towle,
Vifquain,
Weaver,
Wilson,.—17.

NAYS.

Boyd,
Cassell,
Curtis,
Eaton,
Estabrook,
Gibbs,
Granger,
Gray,
Hascall,
Kenaston,
Kirkpatrick,
Lake,
Lyon,
Majors,
Manderson,
Maxwell,
Myers,
Newsom,
Philpott,
Reynolds,
Sprague,
Stewart,
Wakeley,
Mr. President.—24

ABSENT AND NOT VOTING. .

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Parchin,
Scofield,
Tisdel.—11.

So the motion to strike out fifty-seven was not agreed to.

The PRESIDENT (pro tem.) The question is on striking out "nineteen" in the fourth line.

The ayes and nays being demanded the secretary proceeded to call the roll.

Mr. HASCALL. (When his name was called.) Mr. President. I vote against increasing the house of representatives, but in this respect I am satisfied there will be some loss from this excess, and if gentlemen wish to increase to twenty-one, I have no objection. I shall vote "aye."

The President announced the result, ayes 19; nays, 21, as follows:

YEAS.

Abbott,
Griggs,
Hascall,
Kilburn,
Mason,
Neligh,
Price,
Shaff,
Sprague,
Speice ,
Stevenson,
Stewart,
Thummel,
Thomas,
Towle,
Wakeley,
Weaver,
Wilson.—19.

NAYS.

Boyd,
Cassell,
Curtis,
Eaton,
Estabrook,
Gibbs,
Granger,
Gray,
Kenaston,
Kirkpatrick,
Lake,
Lyon,
Majors,
Manderson,
Maxwell,
Myers,
Newsom,
Philpott,
Reynolds,
Robinson,
Mr. President.—21.

ABSENT AND NOT VOTING.

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Moore,
Parchin,
Parker,
Scofield,
Tisdel,
Vifquain,
Woolworth.—12.

So the motion to strike out nineteen was not agreed to.

The PRESIDENT pro tem. The question is upon the motion of the gentleman from Richardson (Mr. Towle) to strike out the word "nineteen," and insert the words "twenty-one."

Mr. MANDERSON. Mr. President. I voted with the majority on the question to strike out the word "nineteen" as the number of senators. I move a reconsideration of that vote.

Mr. PRICE. Mr. President. I hope the amendment to insert "twenty-one" and "sixty- three" will prevail. I wish to put myself on the record, as favoring that proposition.

The PRESIDENT pro tempore. The question is upon the motion to reconsider the vote by which the convention refused to strike out the word "nineteen" in the fourth line.

The ayes and nays being demanded, the secretary proceeded to call the roll.

The President announced the result, yeas 14; nays, 25,—as follows:

YEAS.

Curtis,
Hascall,
Kilburn,
Mason,
Manderson,
McCann,
Neligh,
Price,
Stevenson,
Speice,
Shaff,
Thomas,
Vifquain,
Wakeley.—14.

NAYS.

Abbott,
Boyd,
Cassell,
Eaton,
Estabrook,
Gibbs,
Granger,
Gray,
Griggs,
Kenaston,
Kirkpatrick,
Lake,
Lyon,
Majors,
Maxwell,
Myers,
Newsom,
Philpott,
Reynolds,
Stewart,
Sprague,
Thummel,
Towle,
Weaver,
Wilson.—25.

ABSENT AND NOT VOTING.

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Moore,
Parchin,
Parker,
Price,
Scofield.
Tisdel,
Woolworth,
Mr. President.—13.

So the motion to reconsider was not agreed to.

Mr. TOWLE. Mr. President. I now offer my substitute.

Mr. MYERS. Mr. President. I rise to a point of order, which is:

The proposition cannot be entertained for the reason that the convention has refused to strike out 57 and 19, and also refused to reconsider the proposition.

Mr. TOWLE. Mr. President. I don't think the point is well taken. We can vote upon this proposition.

The PRESIDENT pro tem. The chair is under the impression that the substitute offered by the gentleman from Richardson is in order, it is to strike out the whole section five and insert the following:

Sec. 5. The first house of representatives under this constitution shall consist of 57 members, who shall be chosen for one year, until the year 1873, after that year the members of the house of representatives shall be chosen for two years.

The first senate shall consist of twenty-one members, who shall be chosen for two years.

After the first election the number of senators and members of the house shall be regulated by law, but shall never exceed 100 representatives and 33 senators.

Mr. NELIGH. I move to strike out fifty-seven and insert sixty-three.

Mr. TOWLE. I believe I will accept that amendment.

Mr. BOYD. I move an amendment to strike out 100 and insert 75 and to strike out 33 and insert 25.

Mr. TOWLE. I will accept that amendment.

Mr. MANDERSON. Mr. President I demand a division of the question, first on the number of representatives and not on the extent of the numbers.

The PRESIDENT pro tem. The chair is of the opinion that the substitute is but one proposition and is not divisible.

The question is on striking out section five.

The yeas and nays were demanded.

The secretary called the roll and the president announced the result, yeas, 14; nays, 25, as follows.

YEAS.

Griggs,
Kilburn,
Kirkpatrick,
Neligh,
Price,
Robinson,
Stevenson,
Stewart,
Speice,
Shaff,
Towle,
Wakeley,
Weaver,
Wilson.—14.

NAYS.

Abbott,
Boyd,
Curtis,
Cassell,
Eaton,
Estabrook,
Gibbs,
Granger,
Gray,
Hascall,
Kenaston,
Lake,
Lyon,
Majors,
Manderson,
Maxwell,
Myers,
McCann,
Newsom,
Philpott,
Reynolds,
Sprague,
Thomas,
Thummel,
Vifquain.—25.

ABSENT AND NOT VOTING.

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Mason,
Moore,
Parker,
Scofield,
Tisdel,
Woolworth,
Mr. President.—13.

So the motion was not agreed to.

Mr. GRIGGS. Mr. President. I move to amend section five by striking out "fifty-seven" and inserting "sixty," in fourth line, and striking out "nineteen" and inserting "twenty" in fifth line.

Mr. MYERS. Mr. President. I rise to a point of order. The house has refused to strike out the section, it is not open to further amendment and is now adopted. I quote from Jefferson's Manual:

> "In like manner, if it is proposed to amend by striking out a paragraph the friends of the paragraph are first to make it as perfect as they can by amendments, before the question is put for striking out. If on the question it be retained, it cannot be amended afterwards; because a vote against striking out is equivalent to a vote agreeing to it in that form."

The PRESIDENT pro tempore. The chair is of the opinion the motion is in order.

The question is on the motion of the gentleman from Gage (Mr. Griggs.)

Mr. LAKE. Mr. President. I call for a division of the question. We have had no proposition before this body yet simply to strike out, everyone has been coupled with a proposition to insert something in the place of what is stricken out. A division has been called for every time, and is merely for the purpose of taking the sense of the house.

The PRESIDENT pro tempore. The chair decides a division of this question is not now admissible.

Mr. LAKE. I appeal from the decision of the chair.

Mr. GRIGGS. Mr. President. I wish the gentleman from Douglas (Mr. Lake) would withdraw his request for a division. I would like to know the sense of the convention as to whether or not the members should be greater than nineteen and fifty-seven.

Mr. ABBOTT. Mr. President. I would ask the gentleman from Douglas to withdraw his appeal to allow the previous question to be called.

Mr. LAKE. Mr. President. It is a question of parliamentary law and I want this body to determine whether a question of this kind can be divided.

The PRESIDENT pro tem. Gentlemen. The question is, shall the decision of the chair be sustained.

Mr. LAKE. I hope no misunderstanding may prevail. I insist that there has been no question yet put to this convention, simply to strike out. But every time the motion has been coupled with a proposition to insert. I maintain that just so often as a question is put to strike out and insert, so often may any member of this convention call for a division of the question.

Mr. KIRKPATRICK. The gentleman is mistaken. I think this division is called for and a question taken by striking out, which becomes an independent question; and the chair has ruled right according to this. They make it a separate motion by a division of it.

Mr. WAKELEY. I desire to vote on the question with regard to the merits of the proposition. It seems to me that the ruling of the chair is wrong. Let me illustrate the rule, by taking a little different case. Suppose there was now under consideration a proposition to establish the seat of government at Lincoln, and some gentleman should move to strike out Lincoln and insert Nebraska City; and, the motion being about to be put, a division should be called for. Now, sir, all gentlemen of the convention who should not wish to change the capital from Lincoln to Nebraska City would, of course, vote against striking out Lincoln. Why? Because, if Lincoln should be stricken out, the balance of the proposition would be put, "shall the seat of government be located at Nebraska City?" Therefore, all gentlemen opposed to locating it at Nebraska City would vote against the motion to strike out. Suppose the motion to strike out be put and lost, then some gentleman moves to strike out Lincoln and insert Omaha. All the gentlemen who voted against striking out Lincoln with a view to inserting Nebraska City would vote for striking out Lincoln in order to insert Omaha. I think this is just such a case. The proposition was made to strike out nineteen with a view of inserting twenty-one. The majority was opposed to this. The proposition is now to strike out nineteen and insert twenty, which is a different proposition.

The PRESIDENT. (pro tem.) The decision of the chair has been founded on rule thirty-two. "Nor shall the rejection of a motion to strike out prevent a subsequent motion to strike out and insert."

Mr. ESTABROOK. I think it proper to say that my only desire is to settle the rule permanently, and while I shall vote against the ruling of the chair, I do so, as a matter of respect, without any feeling towards the chair itself.

The ayes and nays were demanded.

The secretary called the roll.

The President pro tem announced the result,—ayes, 22; nays, 16, as follows:

AYES.

Curtis,
Eaton,
Gibbs,
Granger,
Griggs,
Kenaston,
Kilburn,
Kirkpatrick,
Mason,
McCann,
Neligh,
Newsom,
Stevenson,
Stewart,
Speice,
Shaff,
Thummel,
Towle,
Vifquain,
Weaver,
Wilson,
Mr. President.—22.

NAYS.

Abbott,
Boyd,
Cassell,
Estabrook,
Gray,
Hascall,
Lake,
Lyon,
Majors,
Manderson,
Maxwell,
Myers,
Philpott,
Robinson,
Sprague,
Wakeley.—16.

ABSENT AND NOT VOTING.

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Moore,
Parchin,
Parker,
Price,
Reynolds,
Scofield,
Thomas,
Tisdel,
Woolworth.—14.

So the decision of the chair was sustained.

The PRESIDENT pro tempore. The question recurs upon the amendment of the gentleman from Gage (Mr. Griggs) to strike out the words "fifty-seven"in the first line, and insert the word "sixty", and to strike out the word "nineteen," in the fourth line, and insert the word "twenty."

The yeas and nays being demanded, the secretary proceeded to call the roll.

The President announced the result—yeas, 16; nays, 23,—as follows:

YEAS.

Curtis,
Granger,
Griggs,
Kenaston,
Kilburn,
Kirkpatrick,
Neligh,
Stevenson,
Stewart,
Speice,
Shaff,
Towle,
Wakeley,
Weaver,
Wilson.—16.

NAYS.

Abbott,
Boyd,
Cassell,
Eaton,
Estabrook,
Gibbs,
Gray,
Hascall,
Lake,
Lyon,
Majors,
Mason,
Manderson,
Maxwell,

Myers,	Thomas,
McCann,	Robinson,
Newsom,	Thummel,
Philpott,	Vifquain.—23.
Sprague,	

So the amendment was not agreed to.

Mr. TOWLE. Mr. President. I desire to offer another amendment, as follows: To strike out "19" in the 4th line and insert "23."

The PRESIDENT (pro tempore.) The question is upon the amendment offered by the gentleman from Richardson (Mr. Towle.)

Mr. TOWLE. Mr. President. I have seen the disadvantages which have accrued from having small representation heretofore. We know that it is much easier for a candidate to any office, to bring improper influences to bear upon a small body than upon a large one. For instance, there are about enough Federal offices to go around among the majority of our senate, as at present organized, and I know that it is customary for the senators to get these offices. It is the desire, I believe, of a large portion of this convention, and of a large portion of the people of the state of Nebraska to place our representative bodies in such shape that they cannot be so susceptible to the influences brought to bear upon them. "In numbers," as I believe, "there is strength," as well in legislative bodies, as in armies. Now, sir, the committee which reported this article, reported 25 as the number of senators, and 75 as the number of representatives. They thought that was about the proper number. The question of expense arose, and it was reduced to the number here presented with the understanding we should have an annual session of the legislature. Now, sir, we have decided upon biennial sessions, and the number of representatives and senators may be doubled without increasing our expenses. I believe it would give better representation to every portion of our state, and put a stop to the stealing in a certain way, which has been represented to have been done in years past.

Mr. CASSELL. Mr. President. If this amendment prevails we will have 23 senators. It is generally supposed we should have three times as many representatives. Without intending any disrespect to the gentleman, I move to lay this amendment upon the table.

The PRESIDENT (pro tempore.) The question is upon laying the motion upon the table.

Mr. WAKELEY. Mr. President. I wish to state that the amendment cannot be laid upon the table, without laying the whole matter upon the table.

Mr. MYERS. Mr. President. I hope the gentleman from Lancaster (Mr. Cassell) will withdraw his motion.

Mr. CASSELL. I withdraw the motion.

Mr. ROBINSON. Mr. President. I move an amendment to the amendment by inserting the words "Fifty-five" in the place of "Fifty-seven" and the words "twenty-five" in the place of "nineteen."

The yeas and nays being demanded

the secretary proceeded to call the roll.

The President announced the result,—yeas, 6; nays, 33,— as follows:

YEAS.

Hascall,
Maxwell,
Neligh,
Robinson,
Towle,
Wilson.—6.

NAYS.

Abbott,
Boyd,
Curtis,
Cassell,
Eaton,
Estabrook,
Gibbs,
Granger,
Gray,
Griggs,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Lyon,
Majors,
Mason,
Manderson,
Myers,
McCann,
Newsom,
Philpott,
Reynolds,
Stevenson,
Stewart,
Sprague,
Speice,
Shaff,
Thomas,
Thummel,
Vifquain,
Wakeley,
Weaver.—33.

ABSENT AND NOT VOTING.

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Moore,
Parchin,
Parker,
Price,
Scofield,
Tisdel,
Woolworth,
Mr. President.—13.

The PRESIDENT (pro tempore.) The question now occurs on the original motion of the gentleman from Richardson (Mr. Towle.)

Mr. PHILPOTT. I move to amend to insert 18 instead of 19 and 54 instead of 57.

Mr. MYERS. Mr. President. I now rise to the "previous question."

The PRESIDENT (pro tempore.) The "previous question" being seconded, the question "shall the main question be now put?"

The "main question" was ordered.

The PRESIDENT (pro tempore.) The question is on the amendment of the gentleman from Lancaster (Mr. Philpott.) The ayes and nays are demanded. Secretary call the roll.

The vote was taken and the result was announced,—ayes, 8; nays, 31, —as follows:

AYES.

Gibbs,
Kilburn,
Lyon,
Mason,
Philpott,
Thomas,
Towle,
Weaver.—8.

NAYS.

Abbott,
Boyd,
Curtis,
Cassell,
Eaton,
Estabrook,
Granger,
Gray,
Griggs,
Hascall,
Kenaston,
Kirkpatrick,
Lake,
Majors,
Manderson,
Maxwell,
Myers,
McCann,
Neligh,
Newsom,
Reynolds,
Robinson,
Stevenson,
Stewart,
Speice,
Shaff,
Thummel,
Vifquain,
Wakeley,
Wilson.—31.

ABSENT OR NOT VOTING.

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Moore,
Parchin,
Parker,
Price,
Scofield,
Tisdel,
Woolworth,
Mr. President.—13.

So the amendment was not agreed to.

The PRESIDENT (pro tempore.) The question is on the amendment of the gentleman from Richardson (Mr. Towle.) The ayes and nays are demanded; secretary call the roll.

The vote was taken and result announced,—ayes, 16, nays, 23,—as follows:

AYES.

Abbott,
Granger,
Kenaston,
Kilburn,
Kirkpatrick,
Maxwell,
Neligh,
Newsom,
Stevenson,
Speice,
Shaff,
Thummel,
Towle,
Wakeley,
Weaver,
Wilson.—16.

NAYS.

Boyd,
Curtis.
Cassell,
Eaton,
Estabrook,
Gibbs,
Gray,
Griggs,
Hascall,
Lake,
Lyon,
Majors,
Mason,
Manderson.
Myers.
McCann,
Philpott,
Reynolds,
Robinson,
Stewart,
Sprague,
Vifquain.—23.

ABSENT OR NOT VOTING.

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Moore,
Parchin,
Parker,
Price,
Scofield,
Tisdel,
Woolworth,
Mr. President.—13.

So the amendment was not agreed to.

The PRESIDENT (pro tempore.) The question is on the adoption of the section.

Mr. BOYD. Mr. President. Before the vote is taken I wish to say I am in favor of the section excepting allowing the legislature to increase the house of representatives to one hundred and the senate to twenty-five. I shall therefore vote against the adoption.

Mr. ESTABROOK. Mr. President. I have the same objections and shall vote "nay."

The ayes and nays were demanded.

The secretary called the roll and the president announced the result, ayes, 25; nays, 14,—as follows:

YEAS.

Abbott,
Curtis,
Cassell,
Gibbs,
Granger,
Gray,
Griggs,
Hascall,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Lyon,
Majors,
Manderson,
Maxwell,
Myers,
Philpott,
Reynolds,
Robinson,
Stewart,
Sprague,
Speice,
Thummel,
Vifquain.—25.

NAYS.

Boyd.
Eaton,
Estabrook,
Mason,
McCann,
Neligh,
Newsom,
Stevenson,
Shaff,
Thomas,
Towle,
Wakeley,
Weaver,
Wilson.—14.

ABSENT OR NOT VOTING.

Ballard,
Grenell,
Hinman,
Ley,
Moore,
Parchin,
Parker,
Price,
Scofield,
Tisdel,
Woolworth,
Mr. President.—13.

So section five was adopted.

Leave of Absence.

Mr. SPEICE. Mr. President. I ask for indefinite leave of absence.

Leave was granted NEM CON.

Mr. STRICKLAND. Mr . President. I move we adjourn.

The motion was agreed to.

So the convention (at twelve o'clock and six minutes) adjourned.

Afternoon Session.

The convention met at two o'clock

and was called to order by the president.

Report from Engrossment Committee

Mr. REYNOLDS. Mr. President Your committee on engrossment have examined the bill on counties, and beg leave to report that they find the same correctly engrossed.

Motion to Re-Consider.

Mr. ROBINSON. Mr. President. I desire to move a re-consideration of the vote by which section two of the article on Banks and Currency, reported to the committee of the whole yesterday, was adopted.

The PRESIDENT. Gentlemen, the question is upon the re-consideration of the vote by which the bill on Banks and Currency was ordered engrossed yesterday.

Mr. ROBINSON. Mr. President. Before the question is put to a vote I have something to say upon it. If I believed that this convention was resolved deliberately to adopt this section I would not press this question now. But I cannot believe they have. I do not expect, sir, in this present discussion to add much to what I said yesterday either by way of argument or illustration. I cling to the hope that further reflection may have shaken the hasty convictions of some gentlemen who voted yesterday for the amendment of the gentleman from Otoe (Mr. Mason.) But whether this motion to reconsider prevails or not my own convictions of the inexpediency, the impolicy, the positive evil of the section as adopted are so strong that I should be false to myself and to what I conceive to be the best interests of this state, if I failed once more to raise my voice, though but to repeat, in solemn protest against the final adoption of this unfortunate section as part of our fundamental law. It is not denied, it cannot be denied, that this section, though couched in a few lines, proposes to abolish and utterly to extirpate maxims of law and governmental policy which have received the sanction of centuries. The wisest judges, the ablest statesmen, the best thinkers of the age, have passed upon and reviewed the law of corporations as it stands upon our statute books today, and, sir, they without a dissenting voice have pronounced it wholesome and beneficent. Yet it is proposed here in the constitutional convention of the state of Nebraska to do away with it at once and forever. What ground do gentlemen take? What reasons do they assign for so bold and radical a measure? I have listened attentively to the debates upon this subject. I have heard much declamation, but I have tried in vain to discover, in all that has been said by those who favor the amended section for any distinctly defined reason for a change in our law—a change so radical that it seeks to demolish one of the main pillars of our jurisprudence. One of the main arguments of the gentleman from Otoe (Mr. Mason) and one which he urged and reiterated with more than his usual force and eloquence was the loss and ruin which fall upon the poor by the failure of banks and we were cited to several pathetic instances. I grant sir all that is claimed. I grant that banking corporations sometimes fail and that sometimes the poor depositor is injured thereby.

But what does that amount to? Do not individuals sometimes fail? Is it proposed to prevent failures? If so, while I heartily sympathize with the project, I must be permitted to doubt the means by which it is sought to be accomplished. Failures are incident to active commercial enterprise, but I am not aware nor has it been asserted here that corporations oftener fail than individual adventurers in the same field of enterprise.

It was asked yesterday in a very pointed manner by the mover of the amendment, if the amendment was not right. I answer NO. But while I make this answer without hesitation I must be permitted to protest against this appeal to any moral code as furnishing any solution to the question of debate. If it be the law that the individual stockholder shall be liable for all the debts of the corporation, then since it is part of his contract to assume such liability it is right enough so far as he is concerned. He cannot complain. Nevertheless, sir, it is not right. The good of the whole community demands a different rule. The only question, sir, for us to consider is the expediency of compelling the stockholder to assume this liability or on the other hand of limiting it within certain bounds. The question of right in a moral sense is not involved. I apprehend, sir, that, if gentlemen who so warmly advocate these radical fundamental changes are to have any foundation to stand upon, they must prove either that the policy of the past ten centuries has been a mistaken one, or that in our present circumstances there is something which makes it advisable no longer to pursue the policy of the past. Neither of these propositions can be proven, nor has any attempt been made to prove the latter.

Some general charges have been made against corporations and banks which might be held to bear upon the former of these propositions. But to an enterprising and commercial people it is not necessary to expose the fallacy of all that has been urged. In the infancy of commercial enterprise and adventure they are indispensable. Fifty men in a community may have an aggregate capital which would be sufficient for almost any undertaking which promised profit, while if taken singly they might be unable to attempt anything of moment. Suppose that each of them can raise a thousand dollars The profit to be derived from legitimate speculation upon a capital so small must be very inadequate to support a family comfortably. If they combine their capital it amounts to fifty thousand dollars. With that they are able to attempt any ordinary enterprise with fair hopes of success. The expense of handling successfully a capital of fifty thousand dollars directed to a single purpose and managed by hands chosen for their peculiar fitness, is much less than that required to handle fifty capitals of one thousand dollars each. The profit is therefore much greater. But if each of these individuals who contribute to form the capital of fifty thousand dollars becomes, by so contributing, liable for fifty or one hundred times the amount which he contributes while he receives the profits only upon that amount, the risk would be too great. The difference in profit would not justify the hazard. Great risks must be compensated by great gains. If he employ his one thousand dollars alone his profit is small but his risk is smaller. What sensible man could hesitate?

But further; even in a community of considerable activity where a good business is done, how stands the matter? Each of our fifty capitalists may have more money, but generally a large portion is engaged in those pursuits which are suited to individual enterprise as merchandise, shoemaking, wagonmaking, etc. But each has a little surplus capital disengaged from his business, which he is willing to devote to any enterprise which promises profit. Say each has one thousand dollars thus disengaged. Would it be consistent with the ordinary maxims of prudence, for each to contribute his one thousand dollars, when for the profit thence derived he would be subject to a risk of losing his whole fortune by a failure of the enterprise or by the mismanagement of others? It never would be done. It would be better to find a slower but safer investment.

I contend, then, that this section is virtually a prohibition of the formation of banking corporations. Sir, capital was sneered at yesterday by gentlemen upon this floor as if those who were here contending for capital were contending against labor. I, sir, stand forth and offer myself as the volunteer champion of capital. I insist, sir, that the newfangled doctrines about the conflict between labor and capital are false, are a detestible humbug. It needs no philosopher to tell us, no argument to prove that where capital is abundant there labor is abundantly paid. The pro rata to the laborers depends of course upon their numbers, but the aggregate amount paid depends upon the size of the fund out of which it is to be paid, namely the capital of the country. If there be no capital in the country, the boot-maker must wait for the wages of his labor and for bread until he has made and sold a boot, but if I have capital and am in the business of making boots, he may make the boot for me and receive the wages of his labor daily as he earns it. To say that my interest is antagonistic to his is nonsense.

Sir, is it not best for any country to employ all its capital in productive enterprises? Now, sir, banks are the things which enable this to be done. without them, sir, we should be removed back to the barbarism of the middle ages and without banking corporations we should be remanded a great ways back. These are the instruments which pick up the loose floating capital of the country and pile it together where individuals, who desire to engage in industry, requiring the expenditure of capital, may procure it where it has been deposited by those who have it but do not desire to use it. They are the new-born, regenerated christian successors of the money lending, griping Jew. That they have peculiar facilities for playing the scoundrel, there is no doubt. But section three provides for the publication of a quarterly statement which, if enforced, as it can be by proper legislation, obviates every ground of complaint, if any there be.

Sir, no doubt, I have said enough. I think I have shown that corporations have become a necessary element in the economical arrangements of the country. But I wish to say a few words upon the second proposition which gentlemen have not seen fit to advert to, namely; that in our present circumstances there is something which makes it no longer advisable to favor corporations. Not only is this not true but the opposite is too obvious to need to be asserted or defended. Every enterprise in our midst is in its mere infancy, and is likely long to remain so. We need above all other things capital and cooperation. At both of these things the amended section stabs. There is a scare-crow in your midst already more than sufficient to frighten away foreign capital. The gentleman from Otoe informs us that capital will take care of itself, and he is right, sir. It will, it does take care of itself. Five per cent in taxes is too frightful an obstacle for it to face. I am clearly of the opinion that if the object of this amended section is to keep out this stupendous curse of capital it is wholly unnecessary. This five per cent, answers every purpose of a wall of fire.

Yesterday, Mr. President, we were treated to some political economy. The gentleman from Otoe informed us, sir, that demand and supply and competition were the great elements of production. I confess my dulness, Mr. President, in being unable to see just what this proposition, admitting it to be true, has to do with the question of debate; unless it be, sir, that we ought in duty to presume that one who is wise, who is able to state so soundly and withal so originally the elementary laws of political economy, is likely to be equally sound, sound and original on all other questions whatsoever. But, sir, if the matter is of sufficient importance to be quarreled over, I would say that the law of demand and supply has nothing to do with production. If the books say true it merely determines in what particular direction capital shall flow, whether it shall be devoted to the production of corn or potatoes. But, sir, if it be true, as the gentleman puts it, and if it also be true as he puts it that every dollar now borrowed and loaned takes two per cent. a month and is a curse to the country—what is the remedy? To induce more dollars to come into our midst, to increase our supply to get up a competition between A's dollar and B's dollar or to drive all the dollars we have out of the country?

I sincerely hope the convention will reconsider its action, vote down the amendment and adopt the original section.

Mr. McCANN. Mr. President. I very much regret that I was not present yesterday, when the report of the committee on Banks and Currency was discussed. Now before proceeding further, I will say that I am not now interested in the banking business under the general banking laws of this state; but I believe great injustice would be done by the adoption of this article as amended to several banks now in operation. The State Bank at Omaha, one at Brownville, one at Lincoln, one at Grand Island, and another at North Platte, have all been incorporated under the general banking law of the state, and it has been proposed to establish one at Crete, and another at Beatrice. No man, Mr. President, has more or better knowledge as to the financial wants of the South Platte portion of this state than I have. No one is more anxious to supply these wants than I am. But, sir, the wants of the state are such, that the question as to how they shall be supplied, is one which demands the consideration of this convention.

We, sir, have received all the currency under the National Banking Act to which we are entitled and about one-third more, and consequently we cannot expect that this want will be supplied by the organization of banks under the National Banking Act. The only way it can be done is to organize banks under the state banking law, and give to these new banks, the title of "State Banks," and thus invite capital from abroad. Now, sir, every member of this convention knows that we have not enough capital to supply the wants of the state. I, sir, could use five times as much money as our bank now has, under the National Banking Act. I have three applications right here in this hall from three different counties for aid. I don't believe, Mr. President, that there has been one dollar of money issued by these state banks. They don't propose to do that. They simply ask permission to be organized, and called "State Banks," and thereby be able to get eastern capitalists to subscribe to their stock. This is what the state needs, at present, but by the adoption of this article, as agreed upon yesterday, we would utterly wipe out State Banks. No man living in the east, will subscribe to stock in our State Banks, if he is to be held liable for one, two or three hundred thousand dollars. But if you provide that no man shall be held liable to more than double the amount of stock he holds, you secure safety to those who deposit, and also to the stockholders. I know, Mr. President, that there has been money lost by those who have invested in what is called "Wild Cat Banks," but, sir, I believe since 1865, there has not been one dollar lost by being deposited in banks in the state of Nebraska. I have to say here that there is not a more solid, substantial, worthy set of men in the state than the men who have put their capital into the banking business. It is true there are exceptions; there may be a few who are not worthy of your support, or confidence; but, sir, we cannot exclude them from that business any more than you can exclude them from the business of merchandizing, or the practice of law. We hold that all those citizens, all those men who have engaged in this business, have a right to go further east where capital is more abundant and invite capitalists to send their money here, where the rates of interest are higher, and where the demand for money is greater than the supply. If it operated only upon those men who are to derive a profit from engaging in it, I would not complain, but I complain, sir, in behalf of those men who are now wanting to borrow money in this state, and who by the use of materials could greatly improve their own condition. I believe that this section, Mr. President, is as safe, as judicious and as wise as can well be made. I think the objection to the issue of bills or paper money by these banks, is provided for by the National Banking Act. They are not going to issue notes to be taxed by the United States government to such an extent as to tax them out of existence, and all that I see is aimed at now, is not the organization itself, but simply that you may surround it with all these safeguards you can, with all the protection within your power calculated to ascertain the condition of these banks to protect the depositor and the public. Yet I hold, sir, it is to the interest of the public, to the interest of the state at large, that you invite capitalists to organize banks here under this general incorporation act. I, sir, as engaged under the National Banking Act would do a better business if you would tax every other bank out of existence, and we become a monopoly, but, sir, is that the way to conduce to the interest of the state, my county or your county, and these new counties who have not, and who do not enjoy banking facilities today? What is to be the effect, Mr. President, if these state banks were to be abolished? Why, sir, the rate of interest would rise immediately in this state. There then would be less capital than there is now, during the existence of this state constitution. You could not have it under any consideation. No man, no wise man of capital, and capital is cautious, especially when it is handled by prudent men, would invest it in this state under such a provision of the constitution. Then again, another consideration which should weigh with the convention is this, there are 5 or 6 state banks in the state, who have their friends, men of influence, interested in these banks, every man they could influence would be made sworn enemies of these institutions. They would not only spend time, but they would spend money to defeat its adoption. If I were having a personal interest in this matter, I certainly would not express myself in such general terms, but I believe with the very best intentions of protecting the depositor to the fullest extent, and shall support the motion of the gentleman from Lancaster (Mr. Robinson) to re-consider, and shall ask the unanimous consent that these banks be so established that we may not do injustice to them that are organized under this general incorporation act, and that we may have capital from the Eastern states.

One consideration more and I have done. I noticed in yesterday's Chicago Tribune, that in the state of New York, that money was on call for two and three per cent., and notes were being made out at six per cent. I regret I have not in my hands a letter from one of the principal prominent bankers in New York City.

They are inviting loans to be made

in the west to be secured by United States bonds at 7 per cent. Had they presented good inducements for transportation they would get six per cent. I am satisfied if they could send their capital here and realize ten per cent that we should soon have plenty of it, for the developing of our resources. The rate of interest is established by law at twelve per cent. though perhaps there is one man out of ten who do not pay fifteen per cent. This, sir, is just sapping the blood out of the people who are compelled to borrow money and to pay interest, and while this may serve the selfish interests of some men in the state, I contend that every man who has the general welfare of the people at heart must unite with me in framing such an article as will not banish capital.

Mr. WILSON. Mr. President. I rise to a point of order, the gentleman's fifteen minutes are up.

(Here the hammer fell.)

Mr. BOYD. I shall vote for the reconsideration. Under the section as adopted, no more banking corporations would be formed and it would have the effect to drive all those now organized out of existence, and that hereafter it would be done under a partnership. No sane man would subscribe one, three or five thousand dollars to a banking corporation of $100,000 capital stock knowing he would be liable for the whole amount of the capital stock. If they were only liable in proportion to the amount of stock subscribed, no matter what that proportion was, they might.

In regard to objection urged by some against banks of issue, I will say that it is entirely groundless. As long as the National Bank system continues there will be no bank of issue. The section reported by the committee was gotten up so that in case that act was repealed, or when it expired by limitation we would have a perfect system of our own. I shall therefore vote in favor of the motion of the gentleman from Lancaster (Mr. Robinson) to re-consider.

Mr. MASON. I am not very particular about the result of this vote, but I rise to review some of the reasons urged for the re-consideration of this vote.

It is said that we sneer at capital. This is not so. I did say that capital always has been, and always will be able to take care of itself. Yet the gentleman (Mr. McCann) who urges the re-consideration, says that capital is always cautions and will never go where the danger lies. It is further said it would go back to private banks, for the reason it would not pay to enter into copartnership should we retain this provision. Why is this? The assertion is made simply to cause it to be said, that the capital is required to assume all the risks incident to the mismanagement and carelessness of its agents. He will not bring his capital to Nebraska unless he can enjoy this privilege, and not be liable to risk for the mismanagement except to a limited extent. Now, sir, if I as a farmer, make an unfortunate loan, I will have to pay every dollar and the charges stand against me for this deficiency, if it does not for all that I have. We are told it would tend to increase the rate of interest. My experience is not thus. Why, sir, when Nebraska rolled under the burden of a circulating medium, in 1857, when every man's pocket was plethoric your notes were at five per cent. The old settlers in the affairs of husbandry prospered and early in 1858, money was never more abundant. Again, sir, I do believe that every dollar that is brought to Nebraska which takes 2 per cent. a month is a curse to the commonwealth and a curse to the state. Now, sir, what do we say? In moving this amendment we simply say that banks shall be liable? How? Simply as other men who do business, liable to all the risks of mismanagement in which it has invested, for all the liabilities that the company or *corporation directly assumed.* Now, I ask again, is this dishonest? If the capitalist makes improper investment should not he be liable the same as other individuals? If not, how much benefit should he enjoy over and above any individual? You say he should be liable to double the amount of stock he has taken? Why not say when he fails in business he shall render the charges against him, and that shall be the only benefit he shall enjoy? Simply because it would reduce interest and aggregate funds. This, sir, is not so now. My theory of political economy is this, that it is the added wealth of generations of men that aggregates capital and promotes commerce. Where are the money centers of the world, where generations of labor have been added to the body politic. Germany, England and other parts of Europe are the great money centers, because not less than a hundred generations of laborers have mingled the rich products of their earnings with the aggregated mass of capital. Why, sir, are we poor? Simply because we have not added the wealth of one generation of laborers, this is all. And, sir, the evil is not to be remedied by putting on a stimulating plaster upon one part of the body politic, aggregating the capital in one place, how fallacious is this theory. Suppose the entire capital of the state was aggregated in one body politic, could not they dictate the rate of interest and that too without competition? My idea of political economy is this: Competition and demand and supply is a law that regulates everything in the commercial world. Why is it that the farmer, the gentleman speaks of wishes to borrow money when he is poor? Simply because every farmer competes with the great mass of the remaining portion of the state, is brought in sharp competition with them. Why is it the man with $5,000 struggles harder than one with $10,000? Because the man with $5,000 is brought in sharp and direct competition with no less than 20.000 men of the state. Why is it a man with one or three millions gets along easily? He has nobody in God's green earth to compete with him, and even if he be a man of ignorance he can flourish and prosper, and just as you remove one of these classes from competition you give them an advantage over all others, and they by aggregation of capital secure to themselves advantages which are incident to sharp competition. These advantages to the corporation are just as great as they are to the individual, and these advantages are in my judgment sufficient to induce and secure aggregation of capital; and, sir, as I said before, I shall not resist to any considerable extent the re-consideration of this vote. I would vote for it were I assured that these banking associations would be liable for three times the amount of stock they subscribe. It seems to me with all the advantages in favor of aggregation of capital and with the removal from competition it secures, that this is abundant for a new state, and had I time it would be an interesting subject to take up the law on this question of corporations and their liability, and go back to when they first started and were liable for nothing unless they put their common seal to the paper, and in the growth of society they have been rendered more liable a little more and a little more every year, until today they take rank something like an individual, and in my judgmen, sir, we never will strike rock bottom upon this question, we never will rest on the fundamental principle of equal and exact justice, truth, flowing from God himself, until we make them liable the same as every other individual, the same as a man with a soul to save, a heaven to attain and a hell to shun. This, sir, has been the drift of civilization from the time of their organization. While I shall not resist the re-consideration of this vote, if there be anything in the argument urged that it will keep capital out of the state, which I do not believe, I am perfectly willing it should be re-considered; when it is we shall seek to incorporate liability three times the amount of stock they put in, so that if anybody is to lose it shall be the man who is able to stand the loss, instead of dividing it up amongst the poorer classes who have made their deposits in these banks.

Mr. WAKELEY. Mr. President. I wish only to make a few remarks on this subject. I do not propse to entertain the company with any dissertation on political economy or any general remarks. If we were satisfied it were unwise to allow banking associations to operate in this state, then we ought to put a prohibitory clause in the constitution, say in so many words there shall be no banks of issue, no banks of deposit or circulation, but the convention voted against that policy, and this article as adopted allows banking associations to be formed in this state. If formed it will be either for the purpose of issue or deposit and circulation. If the time shall come when banks in this state issue currency, a provision in the article adopted secures this issue of currency by requiring a deposit of United States bonds in the State of Nebraska to redeem the circulation, so that we do not relieve the individual liability of stockholders to secure those who hold bills in a bank. Suppose then banks shall be so formed for the purpose of receiving deposits, to discount notes go and put money in circulation, not their own bills, but such funds as a bank may have. How shall that be secured? Mr. President, I think no argument has been advanced in favor of individual liability of banks which will not equally apply to a corporation formed for any other purpose. We have in our statutes several chapters devoted to corporations, and we fix the liability of stock holders in these acts. In the case of railroads we say that stock holders in a railroad shall be liable for the debts of the corporation and the amount due upon their stock; I read a provision·

"Sec. 112. Every stock holder of any railroad company shall be individually liable to the creditors of such company to an amount equal to the amount unpaid on the stock held by him for all the debts and liabilities of such company, until the whole of the capital stock held by him shall have been paid to the company, but in no other case shall the stock holders be individually liable for the debts of the corporation."

Now, sir, the very principle of a corporation is that men are invited to contribute so much stock to form a sufficient capital stock for carrying on the work, and in the case of a railroad A, B and C, are invited each to give an amount of stock towards the capital, to build, equip and carry on the road, and we say to these gentlemen, you shall not be liable individually for the debts of the corporation, is there not the same reason for saying that a man holding stock in a railroad company shall be individually liable to the extent of all the property he owns? He put the same amount of money in the bank, I see no difference in principle. If the gentleman puts his proposition upon any principle that the stock holder should be individually liable for all the debts of the corporation, then he strikes at the very foundation of corporations, because he makes every corporation a partnership. Men who are partners are each liable for all the debts of the concern; the men who simply hold a share or ten shares are not liable for all the debts of the corporation It is upon that principle we build railroads and allow corporations to be formed for carrying on manufacturing enterprises and other purposes. Now if it be right to make a stock holder in a bank liable for the entire debts of the corporation, then upon the same principle it is right that every stock holder in every corporation should be liable for all its debts. The extent and expediency may be a different question, but the principle is the same. Now, sir, I supposed it was too late in the history of commerce and civilization to abolish corporations, so that all persons investing their capital to carry on a public enterprise shall be mere co-partners, each one liable for all the debts of the concern. If you propose to allow banking associations to be formed, it is self evident, Mr. President, that we must strike out of our constitution this provision which makes every stock holder liable for all the debts of the bank under that provision. If a banking association is formed with a capital of $100,000, and you or I see fit to subscribe for one share of stock upon which we get one hundredth part of the profits of the institution; in case of loss or adversity every dollar of property you have in the world might be swept away for the debts of the corporation, no man of prudence, no man fit to be outside of a lunatic asylum would incur any such risk. We are drifting back to the simple question whether it is right in principle that we should recognize corporations established upon a fundamental principle of corporations, that individual stock holders are not individually liable for the debts of the concern. When you come to the question of what is expedient, it seems to me, when we say that a stock holder in a banking association shall be liable twice the amount of his capital stock, twice as much as he ordinarily invests by taking a share in the corporation, that that is a sufficient extension of the ordinary principle. Either strike the provision out of the constitution or permit the formation of banking associations in this state.

Mr. LAKE. Mr. President. I have but a few words to add. I trust the motion to re-consider will prevail, for several reasons. First—for the reason that this convention, when the section authorizing banks to be created under the laws of a state was under consideration, refused to strike it out upon the motion made for that purpose. It was the sense of the convention that it would be unwise to prohibit banks being organized under the laws of this state. Then, Mr. President, if our action was considered good then; if it was wise and statesman-like, can it be said that the course pursued in respect to the subject now under consideration was wise, just and proper? The effect of the section, as adopted yesterday, and which it is now the desire of the gentleman from Lancaster (Mr. Robinson) by his motion to re-consider, to reach and rectify, would be practically to exclude all persons from the business of banking in this state. This would be the effect of inserting a clause of that kind in the constitution. I believe no one will, upon consideration, come to any other conclusion. The gentleman from Otoe admits this, Mr. President, when he says capital is able to take care of itself. I take it that he would have put the proposition more correctly had he said that individuals possessing capital are ordinarily capable of taking care of it. That, I think, would be more correct, because as my colleague has just well said that no person could be found of ordinary intelligence, of ordinary care, in reference to his pecuniary affairs, in reference to his property, who would be willing to subscribe a thousand or ten thousand dollars of stock to a banking institution or any other corporation, if by so doing, he were to endanger his entire fortune. Now, it is well known that individuals who engage in banking enterprises, usually set apart a portion of their property for that purpose, and retain other portions to carry on other business and other enterprises; and, it should be borne in mind also, Mr. President, that corporations are, in themselves substantially individuals. That is they are artificial persons, and whatever they possess, all their property, is liable for the debts of such artificial persons the same as if they were private persons. The same rule obtains with respect to a corporation under the laws of our state as they now exist, as is applied to a private person, precisely. And, sir, according to the rule laid down in the constitution of Illinois, you have a security far greater than that which would attach to a private person engaged in business on his own account. In the case of the private person you only have as security the amount of his own property. In the case of the artificial person, under the provisions of the constitution of Illinois, and which this committee reported for the consideration of this convention, you have in addition to the property owned and held by the artificial person, an additional sum equal to that amount. You have in addition to the property and capital stock of the corporation an additional sum equal thereto, to the payment of which the individual stockholders are held liable, out of their private property. This they are all bound to contribute in case the corporate property is not sufficient to meet the corporate debts and liabilities.

Now, sir, this makes the security of a corporation far greater, and in all respects far better, than the individual liability of most private persons. This, sir, should not be lost sight of; but I take it that it is really lost sight of when gentlemen upon this floor assert that the only liability or security required of corporations is that exacted of individuals.

In addition to this double liability of stock holders in all enterprises, requiring for their success an aggregation of capital, it is now proposed to make them liable in a further sum, so that the entire liability of a stockholder shall be three times the amount of his capital stock.

Now, sir, when the gentleman asks "why not apply the same rule to corporations that you would to a poor person," I answer that we do apply a much more arbitrary and exacting rule to them than we do to any private person whether he be rich or poor. If you should say to the poor person, "before you engage in business, sir, you must get someone to endorse for you in just double the amount of your property, that you shall pay all debts and liabilities that you may contract, but unless you can give security in such sum you shall not engage in the proposed enterprise." Then you would have a security for the private person equal to that which is required of a corporation under the rule which is laid down in the constitution of Illinois. But, Mr. President, let me say right here, that this other proposition to make all persons who shall subscribe to the capital stock of a corporation or joint stock company liable for the whole amount of the corporate debts, is a visionary scheme which has never found lodgment in a single constitution in this Union. Such an unreasonable proposition cannot be found either within the constitution of a single state of our Union, nor within a single statute book, or legislative provision within the United States. No act of any legislature, was ever so wild and visionary as this. No proposition of this kind was ever successful in any legislative body or any convention until it was adopted here yesterday, on this floor. And I ask gentlemen to consider this proposition before they engraft upon our constitution an anomaly which shall strike a death blow to several banks already organized in our state. I am informed that they have already organized a bank in Brownville and which is considered a safe institution. They have also one in Omaha called "The State Bank of Nebraska," of which ex-Governor Saunders is president, and which is considered by our business men a safe institution. And I believe there are other portions of the state, where our own citizens, deprived of the privilege of engaging in banking under the national banking law, because of there being already issued to this state all the currency that can be given it under that law. Shall they, by our action here today, be prohibited from engaging in a business which, as has been truly said by the gentleman from Otoe (Mr. McCann the prosperity and best interests of the people actually require. It is well known that single individuals are very few indeed that have such an amount of ready cash or have that responsibility which is required to carry on the banking business successfully, and which is actually required to meet the demands of a commercial people. And why, sir, in this convention, fix, irrevocably fix, upon the fundamental law of the state, a proposition which shall be so unjust. I trust, Mr. President, that the motion to re-consider will obtain; that not only this motion, may obtain, but that some sound and wise provision; something on this head that has met with approval in bodies, equally as wise as we are, shall find a place upon our fundamental law, instead of the proposition which was carried through yesterday in the excitement and prejudice occasioned by the eloquence and earnestness of the gentlemen from Otoe.

Mr. MASON. I rise to a question of order. I do not arrogate to myself any such vagaries as are ascribed to me, and I call the attention of the President to the fiftieth rule, which reads as follows:

> No. 50 Every article which it is proposed shall form part of the constitution, shall be read the first and second times, and be referred to the committee of the whole; and after it shall have been considered in committee of the whole, and after the amendments reported by the committee of the whole, shall have been acted on, it shall be open to amendment, in the convention; and where there are no further amendments to be proposed, the question shall be on ordering the article to be engrossed for its third reading; and after the same shall have been engrossed the same shall not be amended except by the unanimous consent of the convention And after the article has been read a third time and passed, it shall be referred to the committee on revision and adjustment, who shall report to the convention all such verbal amendments as they shall deem expedient not changing in any manner the substance of such article, Provided, however, That this rule shall not be so construed as to prevent a majority of the convention from taking up the report of the said committee, and making any alterations or amendments thereto.

Mr. ROBINSON. I wish to call the attention of the President to another rule which says "a motion to reconsider is always in order two days after the question has been decided."

The PRESIDENT. The question is upon the re-consideration of the vote by which the convention agreed to engross the bill relating to banks and currency.

MR. ROBINSON. I believe I have the right of closing the discussion on this question. I wish to answer some of the positions taken by my friend from Otoe. He tells us he did say that capital could take care of itself in all cases, and I most heartily concur with the gentleman in that remark. It will take care of itself. And if we do not allow it to come into our midst it will find some place elsewhere. The very construction which the courts must place upon this section will be to all intents and purposes to say they shall not be incorporated. It is true they may have the common seal and may have other of those privileges which are usually accorded to corporations of an insignificant character. We are willing that every man who becomes an incorporator in a bank shall be liable to the amount of the money he invests. And we think that it is amply sufficient if fifty men go into an enterprise of that kind and subscribe a thousand dollars each, it is a pretty sure sign that it is a dangerous enterprise. Is this convention ready to say that any enterprise started in this state shall not be carried out? Why, will you have men of genius and enterprise, men who are willing to invest their money in doubtful prospects. I would like to see the spirit manifested here that is manifested in eastern countries. If we hold out liberal inducements to these men they will invest their capital, they may say that "by putting in a thousand dollars, I may lose double that amount, but I have a chance to make much more. If a man invests a thousand dollars, and you make him liable for two thousand. I think that is enough——

Mr. MASON. Suppose ten men invest $10,000 each. They make Mr. A, cashier. Their deposits amount to $100,000; now if the bank breaks, who loses that money, the men who deposited or the men who owned the bank?

Mr McCANN. If there are ten men who put in $10,000 each, and are held liable to twice the amount of their stock, they are liable for the $200,000 of deposits.

Mr. MASON. But suppose, in addition to this there are a large number of notes to be paid?

Mr. ROBINSON. If such an unfortunate state of affairs should come to pass, I will say that the loss ought to be divided. If these capitalists are willing to put their money into this enterprise, and I am willing to trust my money in their hands, I think I should run my share of the risk. Now, sir, we have shown that every dollar which comes into the state from abroad and takes out even two per cent interest, is an injury to the state, for you will carry out what little money we have. We have been very much entertained by the gentleman from Otoe (Mr. Mason). We have been told that the great elements of political economy are the laws of supply and demand. I am willing to concede that supply and demand control the direction of capital. Suppose, for instance, the gentleman from Otoe has been raising corn, this year potatoes are worth $1.00 per bushel, and he withdraws his capital from the business of raising corn, and goes into that of raising potatoes. His capital is thus turned in a certain direction by the laws of supply and demand. I am willing to concede that supply and demand are the great regulators. But, sir, in order to build up a community we want a great deal of capital diverted from the channels in which it is now used, and put into banks. If you go to New York, you find money is plenty at six per cent., and if you go still farther east—to the old countries, you can borrow money at 2 per cent. Why is that? It is because they have so much capital. If we held out inducements for capital to be brought here, and permanently invested, it would be done.

Mr. THOMAS. I had the misfortune to be absent yesterday when this matter was discussed. I consider this one of the most important articles. I wish to call attention to a few points. I read from our revised statutes, page 232: "Any number of persons may be associated and incorporated for the transaction of any lawful business, including the construction of canals, railroads, bridges, and other works of internal improvement." Now if any number of persons who desire to form themselves into such corporations as these, should take the proper steps into a company, they would not be liable for the whole amount of capital invested, but for their individual shares only. I can see no reason why it should be required that those going into the banking business should be held liable for a greater amount than those engaged in any other business. It seems to me this principle of "limited partnerships" should apply to the business of banking, as well as to any other. Now I ask members who live in places where there are no banks how they expect to get money into their country, unless they vote to establish state banks? I understand that this section provides that individual members of such banking corporation shall be held liable to the capital of the company. Now would it be safe for any man to invest in this business under such provisions? There would be no state banks under this provision. It is impossible to secure National banks as the National banks in the state have already, all the money the state is entitled to. It seems to me this is a very important matter to those who do not live near the money centers, and I hope you will be very careful how you vote to put this provision in the constitution. Heretofore men have been liable only for the amount of money they put in, but you seem to think this law should not apply to banking associations, but why? I am not able to discover. If we adopt the Illinois section, I think we can make banks safe, and responsible for deposits. I believe that it has been found to work well in all of those states and has been adopted. I cannot see what reason these gentlemen can find why banking establishments should not be put upon the same ground as other corporations. I would much prefer letting it remain as in the Illinois constitution, yet I hope this motion will prevail.

Mr. ABBOTT. Mr. President. I hope this motion will prevail. I don't think I voted in the way that I should. In trying to guard the interests of the depositor, I lost sight of the interest of the banker.

The PRESIDENT. The question is on the motion to re-consider. The ayes and nays are demanded,—secretary call the roll.

The vote was taken and the result announced,—ayes, 22; nays, 15: as follows:

AYES.

Abbott,
Boyd,
Cassell,
Estabrook,
Griggs,
Hascall,
Lake,
Majors,
Manderson,
Maxwell,
McCann,
Neligh,
Newsom,
Philpott,
Reynolds,
Robinson,
Scofield,
Thomas,
Thummel,
Towle,
Wakeley,
Weaver.—22.

NAYS.

Gibbs,
Granger,
Gray,
Kenaston,
Kilburn,
Kirkpatrick,
Lyon,
Mason,
Myers,
Price,
Stewart,
Sprague,
Shaff,
Vifquain,
Wilson.—15.

ABSENT OR NOT VOTING.

Ballard,
Curtis,
Campbell,
Eaton,
Grenell,
Hinman,
Ley,
Moore,
Parchin,
Parker,
Stevenson,
Speice,
Tisdel,
Woolworth,
Mr. President.—14.

So the motion to re-consider was agreed to.

Mr. MASON. Mr. President. I move to amend by inserting after the word "held" in the third line, the following words, "and to the entire extent of the deposits of such banking corporation, company or association."

Mr. ROBINSON. Mr. President. I move to amend so that it will read as follows:

"Every stock holder in any banking corporation, company or association shall be individually responsible and liable to its creditors over and above the amount of stock by him or her held, to an amount equal to his or her respective stock or shares, so held, for all its liabilities accruing while he or she remains such stock holder."

Mr. MASON. That is not an amendment to the amendment, it is the original section as amended before the committee of the whole.

Mr. ROBINSON. I beg leave to differ with the gentleman; it is not the original section that I move.

Mr. MASON. Mr. President. I think I understand this proposition. Mr. Secretary will you now read the amendment just offered by Mr. Robinson. (The Secretary read the amendment as above.)

Now, Mr. President, I will read the section as reported from the committee of the whole as amended:

"Sec. 2. Every stockholder in a banking company or association shall be individually responsible and liable to its creditors over and above the amount of stock by him or her held, to an amount equal to his or her respective stock or shares so held, for all its liabilities accruing while he or she remains such stockholder."

Now, Mr. President, you see that it is precisely the same. I think I know one or two things amongst the many that passes under my observation. Now, sir, what is contemplated by my amendment? It is simply that in any contingency these state banks shall be liable to the whole amount which they shall receive. Not less than three of these savings banks have failed in the United States, and the depositors left without anything while the bankers retired rich. Now, I ask who shall suffer, bankers or depositors? All I desire is for this convention to say who shall suffer? I will say there may be power to legislate into the hands of capital, all that the poor and the lowly have to do cannot be done with my vote and without my offering such amendments as shall seem to me to protect the interest of the poor depositors. Now, sir, I simply make them liable to the entire extent of the deposits they receive and double the amount of the stock. We have now considered the proposed amendment which I offered on yesterday which I withdraw and move in its stead the amendment I have just passed to the chair.

The PRESIDENT. I do not think you can withdraw it. What is before the convention is the original section as amended and ordered engrossed. You have only reversed the machinery of legislation so far as to take it out of the engrossing committee's hands.

Mr. MASON. Mr. President. I ask the unanimous consent of the convention to withdraw the amendment I offered yesterday.

Mr. PHILPOTT. Mr. President. I move to amend the amendment of the gentleman from Otoe (Mr. Mason) to insert "twice," instead of "an amount equal."

Mr. MASON. Mr. President. I move to insert after the word "held" in that report the words "to the entire extent of the deposits in such banking corporation, company or association."

Mr. MANDERSON. Mr. President. I wish to say one word on this subject. The gentleman from Nemaha, (Mr. Thomas) read the law as it now exists; I wish merely to consider this question. The law as it now stands places banking and other corporations in the same class, and treats them exactly the same way as he treats private individuals, and I look upon this as an important question for consideration from a legal standpoint. If a banking corporation is placed exactly on the same footing with any individual, if the law contemplates the obligation of a banking corporation the same way it contemplates the obligations of citizens then it is undoubtedly right. A, B and C with say $20,000 each are three persons in legal contemplation, if they engage each one in business for himself each one is liable to the extent of his capital, or $20,000. Suppose they propose to form a banking corporation and for that purpose organize a bank called the Lincoln bank, with a capital of $30,000, each one taking $10,000 of capital stock, what have they created in law? They have created a fourth person; A, B and C were natural persons in legal contemplation, the Lincoln bank is an artificial person in legal contemplation it, as A and B can sue and be sued, it must sue and be sued in its corporate name. It is a person in the eye of the law. The Lincoln bank being organized, it becomes an artificial person in legal contemplation, as much a person, no more and no less than A, B and C are persons in their individual capacity. The capital of the artificial person is $30,000, just as the capital of A was $20,000 in his individual capacity. The law, therefore, places both the natural persons A, B and C, and the artificial person the Lincoln bank, precisely on the same scale and treats all four persons, natural and artificial in the same way. Thus the law, as it stands today on the statute books of Nebraska! But it is proposed, in the section as originally reported by the committee, to make the obligation of the artificial person greater because of the position of trust occupied by it. To this I do not object, provided such increased obligation does not go too far and to the extent of preventing the creation of the artificial person. It certainly is going far enough to say that the "Lincoln Bank," shall for the benefit of its creditors first exhaust its entire capital—$30,000; and because of its position of trust would then force its creators, A, B and C to pay out of their pockets $30,000 more. Now that is the end attained by the report as it comes originally from the committee ,as it stands in the state of Illinois today; as it stands in the state of Ohio today; except that the same rule is extended to all corporations, whether for banking, manufacturing or other enterprises. And this is what I would like to see obtain here.

The PRESIDENT. The question is upon the amendment of the gentleman from Otoe.

The secretary read the section as amended, as follows:

> Sec. 2. Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors over and above the amount of stock by him or her held to an amount equal to his or her respective stock or shares so held, and to the entire extent of the deposits in such bank, company, corporation or association, for all its liabilities accruing while he or she remains such stockholder ,, ,,

The ayes and nays being demanded the secretary called the roll.

The President announced the result,—ayes, 18; nays, 21; as follows:

AYES.

Curtis,
Eaton,
Gibbs,
Gray,
Hascall,
Kenaston,
Kilburn,
Kirkpatrick,
Lyon,
Mason,
Myers,
Price,
Shaff,
Sprague,
Stevenson,
Stewart,
Vitquain,
Wilson.—18.

NAYS.

Abbott,
Boyd,
Cassell,
Estabrook,
Griggs,
Lake,
McCann,
Majors,
Manderson,
Maxwell,
Neligh,
Newsom,
Philpott,
Reynolds,
Robinson,
Scofield,
Thummel,
Thomas,
Towle,
Wakeley,
Weaver.—21.

ABSENT OR NOT VOTING

Ballard,
Campbell,
Granger,
Parchin,
Parker,
Speice,

Grenell,
Hinman,
Ley,
Moore,
Tisdel,
Woolworth,
Mr. President.—13.

So the amendment was not agreed to.

Mr. ROBINSON. I move the adoption of section two, in the original report of the standing committee, and call for the previous question. It reads as follows:

Sec. 2. Every stockholder in any banking corporation, company or association shall be individually responsible and liable to its creditors over and above the amount of stock by him or her held, to an amount equal to his or her respective stock or shares so held, for all its liabilities accruing while he or she remains such stockholder.

The PRESIDENT. The question is shall the main question be now put?

Mr. MASON. I move to insert, after the word "two" in the third line, the word "twice." I demand the ayes and noes on that.

Mr. PHILPOTT. I demand that my resolution be now read. It has been sent up, but not read.

The secretary read as follows:

"Every stockholder in a banking corporation or company or association, shall be individually responsible and liable to its creditors over and above the amount of stock by him or her held, to an amount equal to twice the entire amount of his or her respective stock or shares so held for all its liabilities accruing while he or she remains such stockholder."

Mr. MASON. I move to insert, after the word "to" in the second line, the words "twice the."

The PRESIDENT. The question is upon the amendment offered by the gentleman from Otoe (Mr. Mason) to the amendment offered by the gentleman from Lancaster (Mr. Philpott.)

The Secretary will then read.

"Sec. 2. Every stockholder in a banking corporation, company or association shall be individually responsible and liable to its creditors over and above the amount of stock by him or her held to twice the amount equal to his or her respective stock or shares so held, for all its liabilities accruing while he or she remains such stockholder."

Mr. GRIGGS. Mr. President. As the section now stands it is the section of the Illinois constitution. By that provision, it makes every person having an interest in a bank, responsible for twice the amount they have in, that is, if they have $1,000 in stock, they are responsible for $2,000. I don't believe they should be made liable for three times the amount they have invested. By the amendment of the gentleman from Otoe (Mr. Mason) they are made responsible for $3,000. I think that the Illinois provision is right. That is, that the report of the committee is correct, without any amendments. There can be no "clap trap" about this; every individual member of the company is liable to twice the amount of stock he owns.

The PRESIDENT. The question is upon the amendment of the gentleman from Otoe (Mr. Mason.)

The ayes and nays being demanded the secretary proceeded to call the roll.

AYES.

Curtis,
Eaton,
Gibbs,
Granger,
Gray,
Hascall,
Kenaston,
Kilburn,
Kirkpatrick,
Lyon,
Mason,
Maxwell,
Myers,
Newsom,
Price,
Stevenson,
Stewart,
Sprague,
Shaff,
Vifquain,
Wilson —21.

NAYS.

Abbott,
Boyd,
Cassell,
Estabrook,
Griggs,
Lake,
Majors,
Manderson,
McCann,
Neligh,
Philpott,
Reynolds,
Robinson,
Scofield,
Thomas,
Thummel,
Towle,
Wakeley,
Weaver.—19.

ABSENT OR NOT VOTNG.

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Moore,
Parchin,
Parker,
Speice,
Tisdel,
Woolworth,
Mr. President.—12

So the amendment was adopted.

The PRESIDENT. The question is upon the amendment of the gentleman from Lancaster (Mr. Philpott) as amended by the amendment of the gentleman from Otoe (Mr. Mason.)

Mr. McCANN. Mr. President. As I understand it, if we vote down the amendment of the gentleman from Lancaster (Mr. Philpott) then the question will be upon the original section?

The PRESIDENT Yes sir.

The ayes and nays being demanded the secretary proceeded to call the roll.

The President announced the result, ayes, 21; nays, 18,—as follows:

AYES.

Curtis,
Eaton,
Gibbs,
Granger,
Gray,
Hascall,
Kenaston,
Kilburn,
Kirkpatrick,
Lyon,
Mason,
Maxwell,
Myers,
Newsom,
Price,
Stevenson,
Stewart,
Sprague,
Shaff,
Vifquain,
Wilson.—21.

NAYS.

Abbott,
Boyd,
Cassell,
Estabrook,
Griggs,
ake
Majors,
Manderson,
McCann,
Neligh,
Philpott,
Reynolds,
Robinson,
Scofield,
Thomas,
Thummel,
Wakeley,
Weaver,
President.—19.

ABSENT OR NOT VOTING.

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Moore,
Parchin,
Parker,
Speice,
Tisdell,
Woolworth.—11.

So the amendment was agreed to.

Mr. McCANN. Mr. President. I move that section be submitted as a special proposition.

The PRESIDENT. The motion of the gentleman from Otoe (Mr. McCann) is not in order. The question is now on the adoption of the section as amended.

Mr. ESTABROOK. I appeal from the decision of the chair. I hold that the motion of the gentleman from Otoe (Mr. McCann) is in order.

The PRESIDENT. Gentlemen the question is whether the opinion of the chair shall stand as the judgment of the house.

Mr. ESTABROOK. Upon that I

have a word to say, the motion was made to adopt this section as amended, as part of this article. But the gentleman from Otoe (Mr. McCann) moves to submit this section as a separate proposition. If I recollect right a like case was held in order by the chair.

The PRESIDENT. The question is on the appeal taken by the gentleman from Douglas (Mr. Estabrook). The ayes and nays are demanded; Secretary call the roll.

The vote was taken and the result was announced; ayes, 30; nays, 10,—as follows:

AYES.

Boyd,
Curtis,
Cassell,
Eaton,
Gibbs,
Granger,
Gray,
Hascall,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Lyon,
Majors,
Mason,
Maxwell,
Myers,
Philpott,
Reynolds,
Stevenson,
Stewart,
Sprague,
Shaff,
Thomas,
Thummel,
Towle,
Vifquain,
Weaver,
Wilson.—30.

NAYS.

Abbott,
Estabrook,
Griggs,
Manderson,
McCann,
Neligh,
Newsom,
Robinson,
Scofield,
Wakeley.—10.

ABSENT OR NOT VOTING.

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Moore,
Parchin,
Parker,
Speice,
Tisdel,
Woolworth,
Mr. President.—12.

So the decision of the chair stands as the judgment of the house.

The PRESIDENT. The question is on the adoption of the section as amended. The ayes and nays are demanded, secretary call the roll.

The vote was taken and the result announced; ayes, 23; nays, 17,—as follows:

AYES.

Curtis,
Eaton,
Gibbs,
Granger,
Gray,
Hascall,
Kenaston,
Kilburn,
Kirkpatrick,
Lyon,
Majors,
Mason,
Maxwell,
Myers,
Newsom,
Price,
Shaff,
Sprague,
Stevenson,
Stewart,
Vifquain,
Weaver,
Wilson.—23.

NAYS.

Abbott,
Boyd,
Cassell,
Estabrook,
Griggs,
Lake,
McCann,
Manderson,
Neligh,
Philpott,
Reynolds,
Robinson,
Scofield,
Thomas,
Towle,
Wakeley.—17.

ABSENT OR NOT VOTING.

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Moore,
Parchin,
Parker,
Speice,
Tisdel,
Woolworth,
Mr. President.—12.

Mr. MANDERSON. I now move Mr. President that the section just adopted be referred to the committee on schedule for the purpose of having them report it as a proposition to be submitted separately.

Mr. ROBINSON. Mr. President. I am not willing to have this submitted separately now, as it has been adopted by a clear majority of 23 to 17 of the members who reflect the will of the people.

Mr. HASCALL. Mr. President. I voted for the adoption of the section as amended, and I desire to have it submitted as a separate section.

Mr. BOYD. Mr. President. In case this section was to be submitted separately would there be another section submitted similar to the one reported by the committee, so the people would have something to choose between? If not I am opposed to submitting it separately.

Mr. SPRAGUE. Mr. President. I am very anxious to have something in this constitution that will insure its success, therefore I hope this section will be kept in the body of the constitution.

Mr. WILSON. Mr. President. If you want this constitution to be adopted, put this very section in the heart of it and I will guarantee it will cause success.

Mr. ESTABROOK. Mr. President. I was casually looking over the act under which we assembled, and find that it was contemplated by the legislature that these matters should be submitted separately. It never was the intention that the entire constitution should be submitted, it should be only a revisory body, to prepare the proper amendments and place them before the people to be voted upon. Section eleven reads as follows:

Sec. 11. The amendments, alterations or revisions shall be so prepared and distinguished by numbers or otherwise, that they can be voted upon separately, unless the convention shall deem the same unnecessary or impracticable. The convention shall prescribe the form or manner of voting, the publication of the amendments, alterations or revisions, the notice of elections, and such other matters as in their judgment the best interests of the state may demand.

I never was in favor of a banking business in the state; I would as soon see it all knocked to pieces as not, but it is a prevalent idea everywhere that banking institutions are necessary. If we have anything in reference to it I desire to have something practicable. As I understand banking, several persons in a community having a little surplus capital are willing to throw that into a general pool forming a corporate body. Allow me to suggest one thought while I am talking on the subject. This thought does occur to me, although I am green on the subject; the distinctions sought to be made in regard to capital and labor, as well as in regard to capital in other countries have no application here. The very individual that makes his deposit will tell us capital will look out for itself. What is the individual washerwoman who may have two hundred dollars, her all, is not she a capitalist as well as the rich man with twenty million? When you have found a person willing to deposit, that is a capitalist to a certain extent. What I would like to see is that two propositions be submitted, the one in the Illinois constitution and the one already adopted, so that if it be rejected the other should take its place.

Mr. VIFQUAIN. Mr. President. I have a resolution:

The secretary read the resolution, as follows:

Resolved, That this convention takes pleasure in granting the privileges of the floor to the Hon. Edward Rummel, secretary of state of Illinois.

Mr. MASON. Mr. President. I favor the submission of this section as a separate proposition, and I would be willing for one to take the Illinois section and the section that was considered so obnoxious, that we struggled so long upon, submit them side by side and never doubt the result. There is one feature in this discussion that seems somewhat distasteful to me, either our position was misunderstood or misrepresented. We have never by word, act or deed sought to make war upon capital; we have said capitalists should be made liable precisely as any other individual. We have repeatedly said that the day has gone by when corporations, as is suggested, should enjoy privileges that other human beings with souls are debarred from enjoying, that is the extent to which we have gone, and sir, if this be treason against corporations and consolidated capital make the most of it, and I hope the proposition to submit this as well as the Illinois section to the people of this state, and when the vote shall come up speaking from the dugout hovel on hillside it will say the wisdom of the people is that banks shall be liable for the deposits they receive.

The ayes and nays were demanded. The secretary called the roll and the president announced the result, yeas, 26; nays, 13; as follows:

YEAS.

Abbott,
Boyd,
Cassell,
Estabrook,
Granger,
Gray,
Griggs,
Hascall,
Kilburn,
Kirkpatrick,
Majors,
Mason,
Manderson,
Neligh,
Newsom,
Philpott,
Price,
Reynolds,
Stewart,
Scofield,
Shaff,
Thomas,
Thummel,
Towle,
Wakeley,
Weaver.—26.

NAYS.

Curtis,
Eaton,
Gibbs,
Kenaston,
Lake,
Lyon,
Maxwell,
Myers,
Robinson,
Stevenson,
Sprague,
Vifquain,
Wilson.—13.

ABSENT OR NOT VOTNG.

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Moore
McCann,
Parchin,
Parker,
Speice,
Tisdel,
Woolworth,
Mr. President.—13

The PRESIDENT. The question is upon ordering this bill to be engrossed and read a third time.

The bill was ordered engrossed.

Motions.

Mr. TOWLE. I move we now proceed to the further consideration of the legislative article.

Mr. WEAVER. I move that the report of the committee on rights of suffrage be made the special order for this evening at eight o'clock.

Mr. GRAY. I move an amendment to that motion that the report of the committee on state, county and municipal indebtedness, may be ordered for this evening at eight o'clock.

The convention divided and the

motion of Mr. Gray was not agreed to.

The PRESIDENT. The question is upon making the report of the committee on rights of suffrage the special order.

Mr. MANDERSON. I move to amend by substituting the legislative article, and that we take it up now, and then resume its consideration when we meet this evening.

The PRESIDENT. The question will be divided. The question is upon taking up the bill now.

Mr. MAXWELL. I move to amend by taking up the legislative article.

The convention divided, and the motion to take up the legislative article was agreed to.

The PRESIDENT. The question now is upon making it a special order for this evening at eight o'clock.

The convention divided and the motion was not agreed to.

The PRESIDENT. The question is upon making the suffrage bill a special order for this evening.

Mr. MAJORS. I am opposed to this being made a special order for this evening. I want it passed over, as I desire to attend a sociable this evening. (Laughter.)

Mr. ESTABROOK. I beg to move that the church sociable be made a special order for this evening. (Laughter.)

Mr. GRAY. Now, Mr. President, I desire, in all seriousness to make this motion—that as we are to have an excursion to Salt Lake City, the suffrage bill be made a special order to be taken up on our arrival at Salt Lake City. (Laughter.)

The motion to make the suffrage bill a special order for this evening was not agreed to.

The secretary read the sixth section, as follows:

Sec. 6. Members of the legislature shall receive for their services four dollars per day, and mileage at the rate of ten cents per mile in going to and returning from the state capital. The speaker of the house shall receive twice the per diem of members.

Mr. KIRKPATRICK. I move to amend the section by striking out the word "four" in the first line, and inserting "three." I do this because it will make a difference to the state of between $3,000 and $4,000 in an ordinary session of the legislature of forty days.

The PRESIDENT. The question is upon the motion to strike out "four" and insert "three," where it occurs in the first line of section six.

The ayes and nays being demanded, the secretary proceeded to call the roll.

The president announced the result,—ayes, 19; nays, 20,—as follows:

AYES.

Boyd,
Curtis,
Cassell,
Eaton,
Estabrook,
Gibbs,
Granger,
Kenaston,
Kilburn,
Kirkpatrick,
Lyon,
Maxwell,
Neligh,
Philpott
Reynolds,
Robinson,
Shaff,
Thomas,
Wakeley.—19.

NAYS.

Abbott,
Gray,
Griggs,
Hascall,

Lake,
Majors,
Manderson,
Myers,
Newsom,
Price,
Stevenson,
Stewart,
Sprague,
Scofield,
Thummel,
Towle,
Vifquain,
Wakeley,
Wilson,
Mr. President.—20.

ABSENT OR NOT VOTING.

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Mason,
Moore,
McCann,
Parchin,
Parker,
Speice,
Tisdel,
Woolworth.—13.

So the amendment was not agreed to.

Mr. LAKE. Mr. President. I voted in the negative, I move to reconsider the vote upon striking out the word "four" and inserting the word "three."

The PRESIDENT. The question is upon the motion to reconsider.

The ayes and nays being demanded, the secretary proceeded to call the roll.

The President announced the result,—ayes, 17; nays, 20,—as follows:

AYES.

Boyd,
Cassell,
Estabrook,
Gibbs,
Kenaston,
Kilburn,
Kirkpatrick,
Lake,
Lyon,
Maxwell,
Neligh,
Philpott,
Reynolds,
Robinson,
Stevenson,
Thomas,
Wakeley.—17.

NAYS.

Abbott,
Curtis,
Eaton,
Granger,
Gray,
Griggs,
Hascall,
Majors,
Manderson,
Myers,
Newsom,
Price,
Stewart,
Sprague,
Scofield,
Shaff,
Thummel,
Vifquain,
Weaver,
Wilson.—20

ABSENT OR NOT VOTING.

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Mason,
Moore,
McCann,
Parchin,
Parker,
Speice,
Tisdel,
Towle,
Woolworth,
Mr. President.—15

So the motion to reconsider was not agreed to.

Mr. HASCALL. Mr. President. I move the previous question.

Mr. BOYD. Mr. President. I ask unanimous consent to strike out the words "mileage at the rate of" in the second line, and insert, after the word "mile" the words "for each mile necessarily traveled."

The PRESIDENT. Shall unanimous consent be given? Consent not given.

The PRESIDENT. The question is on the adoption of the section.

The convention divided and section six was adopted.

The secretary read the next section, as follows:

Sec. 7. The sessions of the legislature shall commence at 12 o'clock, noon, on the first Tuesday in January, in the year next ensuing the election of members thereof, and at no other time, unless as provided by this constitution.

A majority of members elected to each house shall constitute a quorum.

Each house shall determine the rules of its proceedings, and be the judge of the election returns and qualifications of its members; shall choose its own officers; and the senate shall choose a temporary president to preside when the lieutenant governor shall not attend as president, or shall act as governor.

The secretary of state shall call the house of representatives to order at the opening of each new legislature, and preside over it until a temporary presiding officer thereof shall have been chosen and shall have taken his seat.

No member shall be expelled by either house, except by a vote of two-thirds of all the members elected to that house; and no member shall be twice expelled for the same offense. Each house may punish by imprisonment any person not a member who shall be guilty of disrespect to the house by disorderly or contemptuous behavior in its presence; but no such imprisonment shall extend beyond twenty-four hours at one time, unless the person shall persist in such disorderly or contemptuous behavior

Section seven was adopted.

The secretary read the next section, as follows:

Sec. 8 No person shall be a senator who shall not have attained the age of twenty-five years, and have been an inhabitant of the state two years next before his election, and the last year thereof an inhabitant of the district for which he shall be chosen, unless he shall have been absent on the public business of the United States or of this state, and no person elected as aforesaid shall hold office after he shall have removed from such district.

Mr. PRICE. Mr. President. I move to strike out the word "two" in the second line and insert "one"

The amendment was agreed to.

Section eight was adopted.

The secretary read the next section, as follows:

FEDERAL AND STATE OFFICERS INELIGIBLE FOR MEMBERS OF THE LEGISLATURE.

Sec. 9. No person being a member of congress, or holding an office under the United States, or any lucrative office under the authority of this state, shall be eligible to or have a seat in the legislature; but this provision shall not extend to postmasters whose annual compensation shall not exceed $300, nor to township or precinct officers, justices of the peace, notaries public, or officers of the militia.

And if any person shall, after his election as a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

Mr. CASSELL. I move to strike out in the fourth line the word "precincts."

The amendment was not agreed to

Section nine was adopted.

The secretary read the next section, as follows:

EMBEZZLEMENT AND DEFALCATION OF THE PUBLIC FUNDS A DISQUALIFICATION FOR HOLDNG OFFICE.

Sec. 10. No person who shall be convicted of embezzlement or defalcation of the public funds of this state shall ever be eligible to any office of honor, trust or profit under this state; nor shall any person convicted of felony exercise the right of suffrage or be eligible to office, unless he shall have been restored to civil rights.

Section ten was adopted.

The secretary read the next section, as follows:

VACANCIES.

Sec. 11. The legislature may declare the cases in which any officer shall be deemed vacant, and also the manner of filling the vacancy, where no provision is made for that purpose in this constitution.

Section eleven was adopted.

The secretary read the next section, as follows:

EXTRA COMPENSATION OR ALLOWANCE.

Sec. 12. The legislature shall never grant any extra compensation to any public officer, agent, servant or contractor, after the service shall have been rendered, or the contract entered into; nor shall the compensation of any public officer be increased or diminished during his term of office.

Section twelve was adopted.

The secretary read the next section, as follows:

IMPEACHMENT.

Sec. 13. The house of representatves shall have the sole power of impeachment, but a majority of all members elected must concur therein.

All impeachments shall be tried by the senate, and when sitting for that purpose the senators shall be upon oath or affirmation to do justice according to law and evidence.

When the governor of the state is tried the chief justice shall preside.

No person shall be convicted without the concurrence of two-thirds of the senators elected; but judgment in case of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, profit or trust under this state; but the impeached shall nevertheless be liable to indictment and punishment according to law.

No officer shall exercise his office after he shall have been impeached and notified thereof until he shall have been acquitted.

Mr. SPRAGUE. Mr. President. I move to amend in the fourth line, by striking out the words "law and" and inserting "the."

The amendment was not agreed to.

Section thirteen was adopted.

The secretary read the next section, as follows:

OATH OF OFFICE.

Sec. 14. Members of the legislature, before they enter upon their official duties, shall take and subscribed the following oath or affirmation:

I do solemnly swear (or affirm,) that I will support the constitution of the United States, and the constitution of the state of Nebraska, and will faithfully discharge the duties of senator (or representative) according to the best of my ability; and that I have not, knowingly or intentionally, paid or contributed anything, or made any promise, in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill the said ofce; and have not accepted, nor will I accept or receive, directly or indirectly, any money or other valuable thing from any corporation, company or person, for any vote or influence I may give or withold, on any bill, resolution or appropriation or for any other official act.

This oath shall be administered by a judge of the supreme or circuit court in the hall of the house to which the member is elected, and the secretary of state shall record and file the oath subscribed by each member.

Any member who shall refuse to take the oath herein prescribed shall forfeit his office, and every member who shall be convicted of having sworn falsely to, or of violating his said oath, shall forfeit his office and be disqualified thereafter from holding any office of profit or trust in this state.

Mr. MANDERSON. Mr. President. I move to strike out the word "circuit" in the eleventh line and insert the word "district."

The amendment was agreed to.

Mr. ROBINSON. Mr. President. I move to strike out section fourteen; the section in the executive article describes the oath of office for all state officers, and in its definition of an office includes members of the legislature.

The motion was not agreed to.

Mr. HASCALL. Mr. President. I move to amend by inserting the words "or county judge" in the eleventh line after the word "court."

The amendment was agreed to.

The PRESIDENT. The question is now on the adoption of the section as amended.

Section fourteen as amended was adopted.

The secretary read the next section, as follows:

Sec. 15. Every order, resolution or vote to which the concurrence of both houses may be necessary (except on a question of adjournment,) shall be presented to the governor, and before it shall take effect be approved by him, or being disapproved, shall be re-passed by two-thirds of both houses according to the rules and limitations prescribed in case of a bill.

Section fifteen was adopted.

The secretary read the next section, as follows:

APPROPRIATION BILLS TO ORIGINATE IN THE HOUSE OF REPRESENTATIVES.

Sec. 16. Any bill may originate in either house of the legislature, except bills appropriating money, which shall originate only in the house of representatives; and all bills passed by one house may be amended by the other.

Mr. ROBINSON. Mr. President. I move to strike out the section.

The motion was not agreed to.

Section sixteen was adopted.

The secretary read the next section, as follows:

Sec. 17. The legislature shall never alienate the salt springs belonging to this state, but may dispose of the lands connected therewith or purchase other contiguous lands for the purpose of developing said springs, but for no other purpose.

Section seventeen was adopted.

The secretary read the next section, as follows:

Sec. 18. Each house shall keep a journal of its proceedings and publish them (except such parts as may require secrecy), and the yeas and nays of the members on any question shall at the desire of any two of them, be entered on the journal.

All votes in either house shall be "viva voce."

The doors of each house and committees of the whole shall be open, unless when the business shall be such as ought to be kept secret.

Neither house shall without the consent of the other adjourn for more than three days.

Section eighteen was adopted.

The secretary read the next section, as follows:

Sec. 19. No member of the legislature shall be liable in any civil action or criminal prosecution whatever for words spoken in debate.

Section nineteen was adopted.

The secretary read the next section, as follows:

Sec. 20. Representatives shall be chosen by districts of convenient contiguous territory as compact as may be defined by law, except as to the first election which is herein provided for, and every county entitled to two or more representatives shall be divided into districts so that each representative shall be voted for and elected in single districts.

Mr. WAKELEY. Mr. President. I move to amend the section by adding, "but if provision shall be made by the constitution or amendment thereto, for cumulative voting, or minority representation, each county entitled to three or more representatives shall be a representative district or be divided into districts from each of which three or more representatives shall be elected as the legislature may provide."

Mr. STEVENSON. Mr. President. I move to strike out the whole section.

The ayes and nays were demanded. The secretary called the roll and the President announced the result,—ayes, 22; nays, 17,—as follows:

YEAS.

Abbott,
Cassell,
Granger,
Griggs,
Kenaston,
Kirkpatrick,
Lake,
Majors,
Manderson,
Maxwell,
Myers,
Neligh,
Philpott,
Reynolds,
Stevenson,
Stewart,
Scofield,
Shaff,
Thummel,
Weaver,
Wilson,
Mr. President.—22.

NAYS.

Boyd,
Curtis,
Eaton,
Estabrook,
Gibbs,
Gray,
Hascall,
Kilburn,
Lyon,
Newsom,
Price,
Robinson,
Sprague,
Thomas,
Towle,
Vifquain,
Wakeley.—17.

ABSENT OR NOT VOTING.

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Mason,
Moore,
McCann,
Parchin,
Parker
Speice,
Tisdel,
Woolworth.—13.

So the motion was agreed to.

The secretary read the next section, as follows:

Sec. 21. The mode of organizing the house of representatives at the commencement of each regular session shall be prescribed by law.

Section twenty-one was adopted.

The secretary read the next section, as follows:

Sec. 22. Each bill and concurrent resolution shall be read at large on three different days in each house, and the bill and all amendments thereto shall be printed before the vote is taken on the final passage

The presiding officer of each house shall sign in the presence of the house over which he presides, while the same is in session and capable of transacting business, all bills and concurrent resolutions passed by the legislature.

Section twenty-two was adopted,

The secretary read the next section, as follows:

Sec. 23. The legislature shall have no power to release or relinquish, in whole or in part, the indebtedness, liability or obligation of any corporation or individual to the state or to any municipal corporation therein.

Section twenty-three was adopted.

The secretary read the next section, as follows:

Sec. 24. Any person holding office under or by virtue of the laws of this state, who, except in payment of salary, fees or perquisites, receives or consents to receive, directly or indirectly, any thing whatever of value or of personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action, or inaction is to be in some manner or degree influenced thereby, shall be deemed guilty of a felony, and on conviction shall be punished as the legislature may provide.

Section twenty-four was adopted.

The secretary read the next section, as follows:

Sec. 25. Any person or persons offering a bribe, if the same shall be accepted shall not be liable to civil or criminal prosecution therefor; but any person who offers or promises such a bribe, if the same shall be rejected by the officer to whom it is tendered, shall be deemed guilty of an attempt to bribe, which is hereby declared a felony, and on conviction shall be punished as provided by this article.

Mr. MANDERSON. Mr. President. I move to strike out the first line and the second line to and including the word "but."

Mr. HASCALL. The law upon bribery unless upon the language in this section is good for nothing; because if you make both parties liable you can prove it upon neither. And the reason why this section was put in this shape was that you could reach both. It is a preventative, that is what we want. We do not want anybody to go to the penitentiary for offense of this kind, because we want no such offenses committed in the state.

The PRESIDENT. The question is upon striking out.

Mr. MANDERSON. I withdraw my amendment and will offer a substitute for this section, as follows:

"Any person who offers or promises a bribe, shall be deemed guilty of an attempt to bribe, which is hereby declared to be a felony, and on conviction shall be punished as provided by this article."

Mr. WEAVER. In the language of the gentleman from Douglas (Mr. Estabrook) I considerthis "the gem of the whole article." I trust then no substitute will be adopted, if the same shall be accepted. If it were stricken out then the party offering the bribe must keep quiet, because if he opens his mouth he lays himself open to prosecution. But if you leave it as it is the party offering the bribe, not being answerable to the penal law, comes and testifies to the party receiving the bribe. I hope no substitute will be accepted.

Mr. MANDERSON. I suppose I was to approach you to attempt to suborn you to commit perjury and I succeeded and you committed perjury would you have me free from punishment for the crime I have committed, because you have committed perjury?

Mr. WEAVER. Yes, I would. But by your way you would have both go free. I would have a road open by which one, at least could be caught. This is one of the grandest parts of the article.

Mr. ROBINSON. I hope the whole section will be stricken out. If members of the legislature are to be punished let the law say what the punishment shall be.

Mr. STEWART. I move we adjourn until eight o'clock this evening.

The convention divided and the motion was agreed to. So the convention (at six o'clock and fifteen minutes) adjourned until eight o'clock.

Evening Session.

The convention met at eight o'clock, and was called to order by the president.

Mr. WEAVER. Mr. President. I move we make the report of the committee on suffrage the special order for tomorrow evening.

The motion was agreed to.

Mr. MYERS. Mr. President. At the time of adjournment we were discussing Sec. 25. This was engrafted in the constitution of New York; whether it has done much good in bringing about a reformation in that state, I don't know. I believe that it has had but little beneficial effect there, for the legislature of New York is very corrupt today, and I suppose that that of the state of Nebraska is not much better. This crime of bribery is one that is concealed by every means in the power of man. Now I consider the man who will offer the bribe, the most guilty of the two, and I believe if bribery can be punished at all, it can be done under the provision of this section. I believe if we catch the man who offers the bribe, we catch the guilty party. I know of a case which happened in Ohio twelve or fifteen years ago, when a certain party offered a member of the legislature of that state, a considerable amount of money, as a bribe, I think some $500. The member accepted the money and piled it on the speaker's desk, stating from whom he had received it, and for what purpose. The individual who offered the bribe was given over to the courts, and was punished by being imprisoned a certain length of time. I think we should be able to reach those men who crowd about our legislative halls, with money in their pockets, for the purpose of bribing members. Members are not only bribed with money, but with offices also.

Mr. MANDERSON. Mr. President. The section was not introduced or read by me until we came to the consideration of this bill this afternoon. It struck me as being a very strange provision, and one subject to objection. I agree with my colleague (Mr. Myers) that if any man should be punished to the extent of the law, it is the man who offers, or the man who will accept a bribe, being in a position of public trust, but will this provision catch them? Suppose the legislature is sitting, and my honored friend, Col. Myers, is a member, and I approach him with a bribe, I say to him, "here, I will give you this for a certain vote," and suppose he refuses this, (as he certainly would) does not the next section open a door of escape for me? It reads:

> Sec. 26. Any person charged with receiving a bribe or with offering or promising a bribe that is rejected shall be permitted to testify in his own behalf in any civil or criminal prosecution therefor.

It gives me a chance to get out of punishment by swearing I offered the bribe for the purpose of trying the honesty of the person bribed. Now, it seems to me this gives me an opportunity of committing even a greater crime than that of perjury. Who can swear to my intentions but myself? I would prefer to have both these sections stricken out.

Mr. LAKE. Mr. President. I have no doubt that the object the committee had in view in submitting this section to the convention was a good one, it was unquestionably to protect the state against the crime which has too frequently been perpetrated, that of bribery. But, sir, thus far in this convention whenever opportunity has offered, I have opposed the incorporation of principles that are not tried. For the same reason I have opposed the incorporation of the principle in this section and the one following it. The constitution in my judgment ought to be based upon those principles of law which the experience of mankind has demonstrated ought to be sustained in the state and be permanent. Untried schemes ought not to find a place in the fundamental law, for the reason that is has no way to judge of that law. We look to the laws of the United States to ascertain what constitutes crime and the punishment therefor. We don't generally go to the constitution, and I think it would be wrong to say what constitutes a crime in this respect, and to place in our constitution this untried experiment. It is hoped that by the incorporation of this in the constitution great good would be obtained, but I ask would not the same good be obtained by incorporating a like provision in the criminal code? And, if after trying it, it is found not proper, then it could be appealed or amended so as to meet the needs of justice and public good. Has any member upon this floor within his mind now a state having adopted a provision of this kind in their organic laws; or in their criminal code wherein the principle has proved advantageous or brought about the capture of a single individual, if so let him give us his experience here. I would not incorporate any provision in the constitution, unless the experience of the state or other states has demonstrated that such a provision is wise and will work well, for the reason that no new experiments ought to go into our organic act. We here declare if this is incorporated in the constitution that if a man offers to another a bribe and it is accepted that he shall go unwhipped of justice. Shall it be said that one shall go unwhipped simply for the purpose of convicting another person no more guilty than he?

Mr. MYERS. In your opinion does it not put both parties in jeopardy?

Mr. LAKE. It puts both in jeopardy in this way; the man that offers, if refused, but if accepted the man who accepts, one of them goes free in either case. Now, if there is no provision put into the constitution, it will accomplish the same, so that I don't see that anything is to be gained. If a public officer is honest and is so approached he would be always likely to inform, but if he was dishonest enough to accept the bribe would he be honest enough to inform against the person offering it. I think not. This has not been demonstrated in a single state to have been of value, and this being the case, I trust that it will not be engrafted in our organic law, but if the gentlemen are really confident that it will be good, they should seek to have it ingrafted into our criminal code and there prove the principle and if after it has been tried and demonstrated to work well, it is desired to remove it from any cavil, it may be placed in our organic law, but until then do not let us put this in our constitution.

Mr. MANDERSON. Mr. President. I wish to withdraw my amendment and I understand the gentleman from Cass withdraws his amendment to the amendment.

Mr. MAXWELL. Yes, sir, I will withdraw my amendment.

Mr. MANDERSON. I will move to strike out the section and move the adoption of this substitute.

"The offering, giving or procuring of a bribe to any person in office, or the accepting, directly or indirectly of any bribe is hereby declared to be a felony and on conviction shall be punished as fixed by law."

Mr. GRIGGS. Mr. President. I am opposed to the section as reported by the committee. I believe that the man that offers the bribe is worse than the man who accepts it, as I believe that the man who deals out liquor to another until he is drunken and abuses his family is worse than the man who drinks the liquor. I don't believe, if it is left in the constitution, it will prevent the offering of bribes. I believe that this law should be left in the hands of the legislature.

Mr. HASCALL. This is piling a section upon another section. We have already adopted a section, number twenty, whereby we punish one of the parties proposed in the substitute of my colleague (Mr. Manderson), for the person receiving the bribe. If this section is stricken out it would be better to leave it stand as it is.

I am sorry that my colleague (Mr Lake) should be afraid of new measures, particularly when he has a faculty of apprehending a proposition, and should be progressive enough, when a new idea is proposed clothed in proper language, to take up the idea and make it a benefit. This section is from the constitution of New York, and was supported by a gentleman whose name is familiar to all, Ira Harris, who is regarded as one of the best jurists in the United States. I say when a section would meet the approval of a convention composed of such men, I think we are running no risk in incorporating this in our constitution. I do regard this as one of the most important sections we can insert that can be dispensed with; there are some that cannot be dispensed with, but this can.

Mr. SPRAGUE. Mr. President. It is said that at this day and age of the world every man has his price. While I do not go the full length of that idea I believe it to be true to a great extent. What is the effect upon a person that offers this price? He approaches his man and offers a bribe, the first offer he makes is perhaps refused; it is an inducement for him to increase that offer to such an extent that he may compel the man to receive the offer he makes in order to clear his own skirt of any criminal offense, if he does not he subjects himself to a criminal punishment. I do not want to adopt any provision in this constitution that will hold out an inducement to a man to make a success of an intended crime, and that is the effect of this principle. I am opposed to the principle contained herein.

Mr. LAKE. Mr. President. I trust my colleague will withdraw his motion to insert a provision of that kind in the constitution. Sections 88, 89, 90 and 91 of our criminal code contain full provision on the subject of bribery, more full by far than any which it is proposed to engraft upon this instrument; they are the public law of the state; they have been such since the year 1858, and there has been no attempt and no desire on the part of anybody to repeal these laws. I think it is unwise to foist provisions of this kind upon the constitution, they belong to the criminal code of the state where they may be modified and changed as the exigencies of the case and the good of the public may require. I will read section 88 from our criminal code.

"Sec. 88. If any person or persons shall, directly or indirectly, give any sum or sums of money, or any other bribe, present or reward, or any promise, contract, obligation, or security, for the payment or delivery of any money, present or reward or any other thing, to obtain or procure the opinion, judgment or decree of any judge or justice of the peace acting within this territory or to corrupt, induce or influence, such judge or justice of the peace to be more favorable to one side than to the other, in any suit, matter or cause, depending or to be brought before them, or shall, directly or indirectly, give any sum or sums of money, present or reward, or any promise, contract, obligation or security for the payment or delivery of any money, present or reward, or other thing, to obtain, procure or influence the vote of any member of the legislative assembly, or to incline, induce or influence any such member of the legislative assembly, to be more favorable to one side than the other on any question, election, matter or thing pending, or to be brought before the legislative assembly, or either house thereof, the person so giving any money, bribe, present or reward, promise, contract, obligation or security, with intent and for the purpose aforesaid, and the judge, justice of the peace, or member of the legislative assembly, who shall in anywise receive or accept the same, shall be deemed guilty of bribery, and, on conviction, shall be punished by confinement in the penitentiary not less than one year nor more than five years."

The other sections go on and amplify the subject, and are full and complete.

Mr. MYERS. Is there anything in the law that provides punishment for the offer of a bribe?

Mr. LAKE. Certainly. I have just read it.

Mr. MANDERSON. Do those sections mention all officers?

Mr. LAKE. Yes. It mentions a

large number, and then says, "All other officers."

Mr. MANDERSON. I want a section to say that the man who offers a bribe shall be punished.

Mr. LAKE. I have looked through the constitution of Illinois for the purpose of ascertaining whether they, having a criminal code, of which ours is a substantial copy, have thought it advisable to engraft any such provision upon their organic law. I find no such provision. They have left it as I would—to the legislature, to provide such punishment and penalties for the infamous crime of bribery as their judgment shall seem best to suggest. We should leave it to the wisdom of the state according to the exigency of the time. There being no necessity for any provisions in respect to bribery at all, and being full, more full and perfect than we can hope to make it in the constitution. Let us go on and lay down fundamental principles which have been tried by experience and time—tried in the crucible of other states and assemblies, at least as wise as we. Let us reject these mere attempts to try experiments in organic law. I believe it is unwise to try it. And in this respect, as in others, I am opposed to trying experiments.

Mr. MYERS. Mr. President. I would like to have a clear expression of the views of this convention on this section as it stands and as reported by the committee. Sir, does any success in life, in art, in science and even in law, amount to success without previous trial and often long experiment? Yes, sir, the best inventions and improvements which mark the progress of civilization are due to years of patient toil, of years of trial, and steady unremitting toil and study. If this is the only objection that can be brought to bear against the effort to suppress bribery this section ought to pass unanimously. It was inserted into the legislative article by the committee, in the hope that it might receive the support of all who might feel an interest in bringing about this most needed legislative reform for the correction of an evil none more injurious, none more infamous and none more repulsive to all right-thinking men than this. It has grown to such proportions to the detriment of the state, that something must be done, and that quickly, effectually, and without fear or favor and affection. All our laws have thus far failed to suppress this evil, and in the hope that something might be accomplished in this direction, if it meet the approval of this convention, was it introduced in this article, and I hope we may have a vote upon it in such form as will enable its friends and also its opponents to express their convictions. If it will not answer the purpose contemplated, that of catching the briber as well as the bribed, in public affairs, then we do not by any means desire its passage. If it will operate to do this, then we would earnestly desire its passage. Now what are the words of our proposition:

"Any person or persons offering a bribe, if the same shall be accepted, shall not be liable to civil or criminal prosecution therefor, but any person who offers or promises such a bribe, if the same shall be rejected by the officer to whom it is tendered, shall be deemed guilty of an attempt to bribe, which it is hereby declared to be a felony. 'Any person charged with receiving a bribe or with offering or promising a bribe that is rejected, shall be permitted to testify in his own behalf in any civil or criminal prosecution therefor."

This will, if anything can, catch one or the other parties offering or receiving bribes. I admit the full force of the difficulty in the way of catching offenders of this kind. "For ways that are dark, and tricks that are vain" none can excel the wily, mellifluous oily gammon of the lobbyists who infest our halls of legislation, not even the heathen Chinese. I would hold this clause before their eyes, like the sword of Damocles, ready to fall upon them when they break the laws of their country. I would do this so as to strike terror into their hearts to deter them from what I consider the commission of a great crime. Why should this species of crime be allowed longer to bring reproach upon our legislatures? How often do we hear allegations of this kind uttered and applied to whole legislatures, which do contain persons worthy of the high positions conferred upon them, and who are unjustly exposed to these assaults upon character and reputation, simply because they happen to fill seats in legislative bodies. I would hold this law over the head of the evil doer in terrorem of impending evil for a bad act. Let him know that he is in danger when he undertakes to make his point by improper and nefarious means; let him come up to the standard of right and justice, which all honorable men will recognize, and grant with pleasure, or refuse, because it is not right. That is the principle of American legislation and upon which every man can stand. Now, sir, if it fails because of the extreme subtility and agility of the parties proposed to be reached, let us hold it up as an idea which they can comprehend, to the extent, that if the offer of a bribe to an honest man rejected, the chances are, nay the certainty, that exposure may follow. Now even the worst man, with evil intentions in his heart, has some regard for outward appearances—that he may not be spurned by his associates and despised by his friends, which he certainly would do in the event of exposure in the attempt to bribe some one for proper or improper purposes. I would hold it up before him as an idea involving infamy and loss of good, pure and honorable reputation, such as every man, from the highest to the humblest loves to enjoy, and which belongs to every one and ought to be valued as dearer than life. Now, I am in favor of the measure as an idea, that no man likes to place himself in the power of another. Ideas govern the world as well as physical forces and the former produce results at once salutary and useful, and just as apparent and effective. If it does not meet the approval of the convention, I shall not complain. But if everything new that is offered is to be rejected on that account, we would make but little progress indeed in our victories of mind over matter. Then are we called upon to reject many projects, which some claim possess genuine merit, because, they are new. Did Morse give up his idea of electricity because it flashed upon his mind that with it harnessed to iron he might annihilate space and unite continents and people and give it up in despair because it might be a failure because of its untried practicability? Fulton demonstrated his idea of steam navigation, and made it a success. Now these examples of men controlled by ideas, new and untried, should induce and not deter their introduction into statesmanship and practice.

Now, Mr. President. I am after the chap who offers the bribe—the man who conceives evil in his heart, for the accomplishment of a selfish purpose, and it is he, who seeks to drag others to his low level, by attempting to plant his own blackness into the heart of another. If we can catch him we have accomplished our purpose and done the state some service. If this will not do this, I am ready to give it up, but it is the best thing I have been yet able to find, new though it be. I therefore leave it to the judgment of the convention.

Mr. STEVENSON. I do not think it would make any difference if you had the three sections which are printed here, printed upon the back of every man in the state, that it would stop bribing in years to come. Supposing I were a legislator, sitting here with my heels higher than my head, taking my ease, and you, Mr. President were about to run for U. S. senator, supposing you were to come in here and sit down by me and commence to talk. Of course you would not talk loud enough for any body to hear but myself; and you offer me $50 or $100 or $200, for my vote. Now that is a similar case to what is contemplated in this section as offering to bribe me. Now, if I did not accept that and should go before a court of justice and complain of you for offering that bribe you would be brought before that court and tried.

Mr. WAKELEY. I rise to a point of order. That it is not in order to offer a bribe of less than $1,000 to vote for U. S. senator.

Mr. STEVENSON. This twenty-sixth section says "no person charged with receiving, offering or promising a bribe that is rejected shall be permitted to testify." Now this man who offers the bribe is in all respects a person of good character. What is the result in that prosecution? The court has my oath offset by the oath of the defendant. What would nine-tenths of the juries throughout the world do with that. They would set the man scot free. This section would not have a tendency to stop bribery whatever. Bribery has been prevalent ever since the year one and will be until eternity. You may pass all the iron-clad oaths you want to, yet if men are bent on performing the act they can and will do it in spite of any law you may enact. You have first to catch the pig before you can cut his tail off; and you have first to prove the bribery on a man before you can convict him. The criminal code makes it a criminal offense for a man to offer or accept a bribe, if there is evidence enough to convict a man before a jury. We have our remedy now just as well as we would if we passed this section. Therefore, I hope that the substitute of the gentleman will not prevail, and that the sections as they stand will all be stricken out.

Mr. PHILPOTT. *Mr. Chairman.* It was not my intention to speak at all on the section now under consideration. I had thought that I preferred to quietly cast my vote, not only against the amendment proposed, but also against the adoption of section 25. I believe it ought to have no place in the constitution. The organic act ought not to contain a chapter on the crime of bribery. The legislature of the state can provide wise safeguards against this offense—such safeguards as the exigencies of the times may demand. The principle contained in the first line of the section is obnoxious. It permits the briber, if he succeeds in bribing his victim to go unwhipped of justice; "He shall not be liable to civil or criminal prosecution," if the bribe offered by him be accepted. And, gentlemen on this floor say, that they approve the section, for that, by the briber being not liable in a civil or criminal prosecution, he is thereby permitted to testify against his unfortunate victim. Why should we place in our constitution a principle at variance with the law of our state? a law which has received the sanction of our people and courts from the organization of the territory to the present time. Our criminal code provides that "accessories shall not be allowed to give testimony." The principal practice in England is not sanctioned here—"turning King's evidence." We do not believe that he is a competent witness to testify against a hitherto unblemished character who himself acknowledges that he is a felon. There are other objections which I have to the section which I will pass unnoticed that I may state a second reason which I have for addressing you now.

A gentleman upon this floor desires to address you in opposition to the view I take of the section. I desire very much to hear him, have asked him why he does not take the floor. He desired me to precede him, and kindly asked me if I knew anything against him that I might advert to in order to stir him up, for, he says that it is not his day for talking and that he can not speak unless he is goaded up a little. (Laughter.) In reply to the worthy chief justice I assured him that I knew nothing against his character or fair fame, but yet if I obtained the floor I would indulge in a few pleasantries with reference to him with which I would be much pleased if they should have the effect to arouse the Otoe lion from his lethargy. (Laughter.) So now gentlemen as I am to be followed by the gentleman from Otoe, (Mr. Mason,) I desire in the first place to caution you somewhat that you may not be misguided by either the force of his eloquence or the power of his sophistry—nor what is worst of all the insincerity of his heart.

At the adjourning of the afternoon session he was against the adoption of the section, but while taking tea, he says he heard that in the New York convention, Horace Greeley supported a like amendment and that as he has adopted Greeley's farming schemes he believes he ought likewise adopt Greeley's constitutional schemes. (Laughter.) And an other pleasantry—you all remember with what eloquence and apparent earnestness the gentleman for many hours upon this floor opposed the allowing of special benefits in the assessment of damages. Yet when the long roll was called—he dodged. You did not find him on the registry list for voting purposes.

Again, you will remember how on this floor he advocated the adoption in the constitution, of an article to provide for a commission to determine the fact of insanity where it is made a defense in cases of murder. For two long hours he held this body spell bound by the eloquence of his words—insisting on the imperative necessity of the adoption of the section; but when the long roll was called he arose "to explain" and assured us that he was not just sure that it was the best thing—that a doctor had commissioned him to present his, the doctor's views, to the convention, and he had discharged his duty. Why, this man is wonderful in the performance of his omissions. He tells us that a woman has commissioned him to take up arms against woman suffrage. I have no doubt but that he will discharge his commission with his usual sincerity—and after opposing woman suffrage, if we can catch him in the hall he will vote for it, for such I believe he knows to be his duty. (Laughter.) But why indulge in these pleasantries. I might point them out by the score for no man on this floor has shown as many contrarieties and inconsistencies in this course here, as the honorable gentleman for whom I have the kindest feelings, and only advert to these facts, at his request to goad him up a little that he may do Horace Greeley justice. Now I hope that what I have said with reference to the Hon. Gentleman from Otoe—if ever reference should be had to these remarks that they will ever be construed as pleasantries of the hour—rather than strictures or reflections on the character of him whom I hold in high esteem.

Mr. MASON. Mr. President. The only reply I will make to the gentleman from Lancaster is to say, "Shoo fly, don't bother me." (Laughter.)

Mr. PHILPOTT. That's "old," but it is like most of the gentleman's speeches—all quotations. (Laughter.)

The PRESIDENT. The question is upon striking out the section.

The ayes and nays being demanded, the secretary proceeded to call the roll.

Mr. BOYD. (When his name was called.) I wish to explain my vote. I am in favor of striking out section 25, and let the laws of our state govern such cases.

The President announced the result—Yeas, 25; nays, 14,—as follows:

AYES.

Boyd,
Cassell,
Curtis,
Estabrook,
Gibbs,
Granger,
Gray,
Griggs,
Kenaston,
Kirkpatrick,
Lake,
Lyon,
McCann,
Majors,
Manderson,
Maxwell,
Philpott,
Price,
Reynolds,
Scofield,
Sprague,
Stevenson,
Stewart,
Towle,
Wakeley,
Wilson.—25.

NAYS.

Abbott,
Eaton,
Hascall,
Kilburn,
Mason,
McCann,
Myers,
Neligh,
Newsom,
Shaff,
Thummel,
Thomas,
Vifquain,
Weaver.—14.

ABSENT OR NOT VOTING.

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Moore,
Parchin,
Parker,
Robinson,
Speice,
Tisdel,
Woolworth,
Mr. President.—13.

So the motion to strike out was agreed to.

Mr. GRAY. Mr. President, I move to reconsider the vote by which section 24 was adopted. I also move to strike out section 26.

The PRESIDENT. The question is upon the motion to reconsider the vote by which section 24 was adopted.

The convention divided and the motion was agreed to.

Mr. GRAY.. Mr. President, I move to strike out section 24.

The motion was agreed to.

Mr. GRAY. I move to strike out section 26.

The motion was agreed to.

The secretary read the next section, as follows:

Sec. 27. Members of the legislature shall in all cases except treason, felony or breach of the peace, be privileged from arrest, nor shall they be subject to any civil process during the session of the legislature nor for fifteen days next before the commencement and after the termination of each session.

Mr. STEVENSON. Mr. President. I move to strike out, after the word "arrest" in the second line, as far as the word "during," in the same line.

Mr. MASON. Mr. President. I hope those words will be stricken out. I have known cases where there was good reason for striking them out, but never knew any good reason why they should be left in.

The PRESIDENT. The question is upon the motion to strike out the words suggested by the gentleman from Cuming (Mr. Stevenson.)

The motion was agreed to.

The PRESIDENT. The question now is upon the adoption of the section, as amended.

The section was adopted.

The secretary read the next section, as follows:

SPECIAL LEGISLATION PROHIBITED.

Sec. 28. The legislature shall not pass local or special laws in and of the following enumerated cases, that is to say:

For granting divorces;

Changing the names of persons or places;

Laying out, opening, altering and working roads or highways;

Vacating roads, town plats, streets, alleys, and public grounds;

Locating or changing county seats;

Regulating county and township affairs;

Regulating the practice in courts of justice;

Regulating the jurisdiction and duties of justices of the peace, police magistrates and constables;

Providing for change of venue in civil and criminal cases;

Incorporating cities, towns and villages, or changing or amending the charter of any town, city or village;

Summoning and impanelling grand or petit juries;

Providing for the management of common schools;

Regulating the rate of interest on money;

The opening and conducting of any election or designating the place of voting;

The sale or mortgage of real estate belonging to minors or others under disability;

The protection of game or fish;

Chartering or licensing ferries or toll bridges;

Remitting fines, penalties or forfeitures;

Creating, increasing or decreasing fees, percentage or allowances of public officers during the term for which said officers are elected or appointed;

Changing the law of descent;

Granting to any corporation, association or individual the right to lay down railroad tracks, or amend existing charters for such purpose;

Granting to any corporation, association or individual any special or exclusive privileges, immunity or franchise;

In all other cases where a general law can be made applicable no special law shall be enacted.

Mr. BOYD. Mr. President. I move to amend by adding after the word village in the thirteenth line, the following: "Provide for the election of the members of the board of supervisors in townships, incorporated towns or cities."

The amendment was agreed to.

Mr. ABBOTT. I move to strike out lines twenty-two and twenty-three.

The convention divided and the motion was not agreed to.

The PRESIDENT. The question is on the adoption of the section as amended.

Section twenty-eight was adopted.

The secretary read the next section, as follows:

WRITS OF ELECTION.

Sec. 29. The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature.

Section twenty-nine was adopted.

The secretary read the next section, as follows:

CERTAIN EXECUTIVE APPOINTMENTS VOID.

Sec. 30. No person elected to the legislature shall receive any civil appointment within this state from the governor, the governor and senate, or from the legislature, during the time for which they have been elected, and all such appointments and all votes given for any such members for any such office or appointment shall be void; nor shall any member of the legislature or any state officer be interested either directly or indirectly in any contract with the state or any county thereof authorized by any law passed during the term for which he shall have been elected or within one year after the expiration thereof.

Section thirty was adopted.

The secretary read the next section, as follows:

SUPPRESSION OF VICE AND IMMORALITY.

Sec. 31. The legislature shall provide by law for the suppression of vice and immorality in this state, and shall never authorize any games of chance, lottery, or gift enterprise, under any pretence or for any purpose whatever.

Mr. TOWLE. I move to strike out the section, Mr. President.

The motion was not agreed to.

Section thirty-one was adopted.

The secretary read the next section, as follows:

APPROPRIATONS IN PRIVATE BILLS VOID.

Sec. 32. The legislature shall make no appropriations of money out of the treasury in any private law.

Bills making appropriations for the pay of members and officers of the legislature and for the salaries of the officers of the government shall contain no provision on any other subject.

The salary of any officer shall not be increased for any term for which he may have been appointed or elected.

Mr. WILSON. Mr. President. I move to strike out the fifth and sixth lines.

The convention divided and the amendment was not agreed to.

Section thirty-two was adopted.

The secretary read the next section as follows:

SPECIFIC APPROPRIATIONS.

Sec. 33. No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law. and on the presentation of a warrant issued by the Auditor thereon, and no money shall be diverted from any appropriation made for any purpose or taken from any fund whatever, either by joint or separate resolution.

The auditor shall within sixty days after the adjournment of each session of the legislature prepare and publish a full statement of all monies expended at such session, specifying the amount of each item and to whom and for what paid.

Section thirty-three was adopted.

The secretary read the next section, as follows:

NECESSARY APPROPRIATIONS.

Sec. 34. Each legislature shall provide for all the appropriations necessary for the ordinary and contingent expenses of the government until the expiration of the first fiscal quarter after the adjournment of the next regular session, the aggregate amount of which shall not be increased without a vote of two-thirds of the members elected to each house, nor exceed the amount of revenue authorized by law to be raised in such time; and all appropriations requiring money to be paid out of the state treasury from the funds belonging to the state shall end with such fiscal quarter; Provided, that the state may, to meet casual deficits or failures in revenues, contract debts never to exceed in the aggregate $250,000, and monies thus borrowed shall be applied to the purpose for which they were obtained or to pay the debt thus created and to no other purpose: and no other debt except for the purpose of repelling invasions, suppressing insurrection or defending the state in war (for the payment of which the faith of the state shall be pledged), shall be contracted unless the law authorizing the same shall at a general election have been submitted to the people and have received a majority of the votes cast for the members of the legislature at such election. The legislature shall provide for the publication of said law for three months at least before the vote of the people shall be taken upon the same, and provision shall be made at the time for the payment of the interest annually as it shall accrue by a tax levied for the purpose or from other sources of revenue; which law, providing for the payment of such interest by such tax, shall be irrepealable until such debt be paid; And provided further, that the law levying the tax shall be submitted to the people with the law authorizing the debt to be contracted.

Mr. WEAVER. Mr. President. I move to strike out "$250,000" in the eighth line and insert "$150,000."

The amendment was not agreed to.

Section thirty-four was adopted.

The secretary read the next section, as follows:

PUBLIC CREDIT NOT LOANED.

Sec. 35. The State shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan or extend its credit to, or in aid of, any public or other corporation, association or individual.

Section thirty-five was adopted.

The secretary read the next section, as follows:

MISCELLANEOUS.

Sec. 36. The legislature shall provided by law that the fuel, stationery and printing paper furnished for the use of the state, the copying, printing, binding and distributing the laws and journals, and all other printing ordered by the legislature, shall be let by contract to the lowest responsible bidder; but the printing and binding shall be done within the state, and the legislature shall fix a maximum price. All such contracts shall be subject to the approval of the governor, and if he disapproves of the same there shall be a re-letting of the contract in such manner as shall be prescribed by law.

Section thirty-six was adopted.

The secretary read the next section, as follows:

Sec. 37. No act shall take effect until the first day of July next after its passage unless in case of emergency to be expressed in the preamble or body of the act. The legislature shall, by a vote of two-thirds of all the members elected to each house, otherwise direct; nor shall any act take effect until it shall have been published in accordance with law.

Section thirty-seven was adopted.

Mr. BOYD. Mr. President, I have a section I wish to offer in place of section twenty, which was stricken out.

The secretary read the section, as follows:

"Representative shall be chosen from districts formed of contiguous territory and as compact as practicable, to be defined by law, except at the first election which is herein provided for, and every county entitled to two or more representatives shall be divided into districts so that the representatives shall be voted for and elected in single districts."

Mr. HASCALL. Mr. President. I have a substitute for the section.

"Representatives shall be chosen by districts of convenient, contiguous territory, as compact as may be, to be defined by law. A county not having the requisite population to entitle it to a representative shall be joined to a like county and made a representative district, provided such district shall contain the population necessary for a representative and no county thereof shall be included in any other representative district."

Mr. WAKELEY. Mr. President. It seems to me that my colleague does not offer this as a substitute for the proposition of Mr. Boyd. It relates to a different matter, either one is a proper subject of a distinct section. Let the vote be taken on this proposition to elect in single districts. I see no propriety in making one a substitute for the other.

Mr. TOWLE. I would enquire of Mr. Boyd whether it is the intention of the section that this convention shall district into single representative districts.

Mr. BOYD. It provides for the districting hereafter, not the first election.

Mr. MAJORS. Mr. President. It seems to me this question could safely be left to the legislature. If it is politic in us to fix in this constitution that voters of a district, or provide hereafter that counties shall be districted into single representative districts and thereby prevent the people from exercising what their judgment would deem best; I can see some disadvantages the people will be put to under this restriction, for instance, our counties are constantly improving and the population varying in different portions of the county, and if we undertake to fix our representative districts in counties upon population, it is going to divide townships for the purpose of giving an equal number of citizens for a representative, and I can imagine a great many circumstances that might arise that would probably lead the people to abandon the plan, therefore I think we can safely leave this work to the legislature to provide for it if the people desire it, and in case they try it and are not satisfied with its workings, they can by act of the legislature change the plan of districting. I shall oppose the section.

Mr. GRIGGS. Mr. President. I rise to a point of order, that is that the section offered by Mr. Boyd has already been stricken out and cannot again be offered. With the exception of the transposition of a few words it is an exact copy of section twenty stricken out. Cushing's Manual page 65, section 105 reads as follows:

> "If an amendment by striking out is agreed to, it cannot be afterwards moved to insert the same words struck out or a part of them; but it may be moved to insert the same words with others, or a part of the same words with others, provided the coherence to be inserted make these propositions substantially different from the first."

Mr. ESTABROOK. I have suggested what I deem the true rule in several instances, but it has not been settled. As I understand the parliamentary practice, it is that we first go through section by section and when we are in that attitude then the rule of the gentleman applies. But when we have gone through, and there may have been amendments, that we shall return again and even supply anything which has been stricken out, to make the article complete. I think it is in order to go back over the road we have traveled with the whole bill.

Mr. ABBOTT. If the gentleman will withdraw his substitute, I will move to reconsider it.

The PRESIDENT. It would stultify a body to go back on its own word. Substantially, the very proposition stricken out here is to insert again. In answer to the proposition of the gentleman from Douglas (Mr. Estabrook) I would say that it is true we go straight through a bill and return, and it may be amended and stricken out; but where votes have been had upon propositions, the same votes cannot be had over again. I have to rule this out of order.

Mr. ABBOTT. I move to reconsider.

The PRESIDENT. The motion is to reconsider.

Mr. HASCALL. How about my proposition, which I offered a little while ago.

The PRESIDENT. That will be considered, and is before the convention, and will be considered unless something else attracts attention.

The PRESIDENT. The question is upon reconsidering the vote by which section twenty was stricken out. It reads:

> Sec. 20 Representatives shall be chosen by districts of convenient, contiguous territory as compact as may be defined by law. A county not having the requisite population to entitle it to a representative shall be joined to one or more like counties and made a representative district; such district shall contain the population necessary for a representative, and no county thereof shall be included in any other representative district. But no county shall be divided in the formation of a representative district.

The ayes and nays being demanded, the secretary proceeded to call the roll.

The president announced the result,—ayes, 19; nays, 20,—as follows:

AYES.

Boyd,
Eaton,
Estabrook,
Gibbs,
Hascall,
Kilburn,
Lake,
Lyon,
Mason,
Manderson,
Newsom,
Stevenson,
Sprague,
Scofield,
Shaff,
Thomas,
Towle,
Wakeley.—19.

NAYS.

Abbott,
Curtis,
Cassell,
Granger,
Gray,
Griggs,
Kenaston,
Kirkpatrick,
Majors,
Maxwell,
Myers,
McCann,
Neligh,
Philpott,
Price,
Reynolds,
Stewart,
Thummel,
Weaver,
Wilson.—20.

ABSENT OR NOT VOTING

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Moore,
Parchin,
Parker,
Robinson,
Speice,
Tisdel
Woolworth,
Mr. President.—13

So the motion to reconsider section twenty was not agreed to.

Mr. HASCALL. Now, I ask for the reading of my proposition.

The secretary read, as follows:

"Representatives shall be chosen by districts of convenient contiguous territory, as compact as may be, to be defined by law. A county not having the requisite population to entitle it to a representative, shall be joined to one or more like counties and made a representative district, such district shall contain the population necessary for a representative and no county thereof shall be included in any other representative district."

Mr. WAKELEY. I move to amend by inserting the word "single" before the word "districts," wherever it occurs in the proposition. I demand the ayes and nays.

Mr. MASON. At one time during the session of this convention, this question was brought prominently to view, when minority representation was moved——

Mr. STEWART. I rise to a point of order The yeas and nays have been demanded.

The PRESIDENT. Shall the gentleman have leave?

The convention divided and the gentleman was granted leave.

Mr. MASON. I am extremely thankful to this convention for the favor granted in this regard, and I will endeavor not to trespass long upon their time. There was a time during the session of this convention when this subject was brought very prominently to view by the gentleman from Douglas, (Mr. Estabrook,) in the consideration of the question of minority representation which incidentally arose, and it was said that the evils existing in the body politic were to be remedied in one of two ways—either by minority representation, or by the single district system. It was not my purpose, as one who sits in this constitutional convention, to say whether the single district system would vote an individual up or vote him down. If it does give better representation to the people of the state, then it behooves us to engraft it in the law, If it does not, then it is our duty to reject it. In my own county, the political elements are very nearly equally divided; sometimes one party is up, sometimes the other. Now, if you district that county, the democrats will get about one half, and the republicans about one-half. I support minority representation, not because I believe it will bring abler men into the representative halls, but because I believe it reflects the political views of the people of the whole state, and for that reason alone, I support this measure, well knowing that it can bring no political gain to me nor the party to which I have the honor to belong. I for one shall vote for the single district system. Sir, believing this to be just and right, I have said all I desire to say upon this question, and I urge it in nobody's interest, but through a desire that this convention should provide that the views of the whole state should be reflected in our legislative halls, and I believe it is our duty to form our organic law, so as to accomplish this result. It is my duty to secure equal and exact justice to the minority, while I at the same time, secure equal and exact justice to the majority. It is a poor argument for me to say that if they (the minority) were in my position, they would not do that for me.

Mr. HASCALL. Mr. President. The gentleman says that representatives should be chosen from single districts. I think that he should say that representatives shall be chosen "singly"—not chosen from single districts. I claim that if you say that representatives shall be chosen from "single districts," it is not saying that "single representatives" shall be chosen from those districts.

Mr. WAKELEY. Mr. President. While I think the language liable to be misconstrued I will retain the language as it is.

Adjournment.

Mr. WEAVER. Mr. President. I move we adjourn. The yeas and nays being demanded the roll was called and resulted,—yeas, 20; nays, 19,—as follows:

YEAS.

Curtis,
Cassell,
Granger,
Griggs,
Kenaston,
Kirkpatrick,
Lake,
Majors,
Mason,
Maxwell,
Myers,
McCann,
Neligh,
Philpott,
Price,
Reynolds,
Stewart,
Thummel,
Weaver,
Wilson.—20.

NAYS.

Abbott,
Boyd,
Eaton,
Estabrook,
Gibbs,
Gray,
Hascall,
Kilburn,
Lyon,
Manderson,
Sprague,
Stevenson,
Scofield,
Shaff,
Thomas,
Towle,
Vifquain,
Wakeley.—19.

ABSENT OR NOT VOTING.

Ballard,
Campbell,
Grenell,
Hinman,
Ley,
Moore,
Parchin,
Parker,
Robinson,
Speice,
Tisdel,
Woolworth,
Mr. President.—13.

So the convention adjourned.